No. 72-734

In the Supreme Court of the United States

OCTOBER TERM, 1972

UNITED STATES OF AMERICA, PETITIONER

v.

JOHN P. CALANDRA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

APPENDIX

INDEX

CRIMINAL DOCKET

UNITED STATES DISTRICT COURT

Northern District of Ohio—Eastern Division

Title of Case	Attorneys
THE UNITED STATES vs. JOHN P. CALANDRA	*For U. S.:* *For Defendant:* LEONARD YELSKY Leader Bldg. Gold, Rotatori, Messerman & Hanna 1100 Investment Plaza 44114

Statistical Record	Costs
J.S. 2 mailed May 31 1971	Clerk
J.S. 3 mailed	Marshall
Violation Possession of firearm having been prev. convicted of a felony	Docket fee
Title 18	
Sec. 1202(a)(1) USC 3 count indictment	(5-12-71 Registry 2500.00)

Date	Proceedings
5/12/71	Indictment filed.
5/12/71	Oral request for warrant of arrest. Warrant of arrest issued 5/12/71. Bail fixed at $10,000.00 corporated surety bond., Lambros, J. Bond reduced to $2,500.00 personal bond (5/12/71).
5/12/71	Appearance bond filed in the amount of $2,500.00. (Personal)

Date	Proceedings
5/14/71	Warrant of arrest of the def. returned and filed. Def. arrested 5/12/71.
5/12/71	Order that upon oral motion of the def. the def. now be admitted to bail on a $25,000 bond with satisfaction by a 10% cash deposit under 18 U.S.C. sec. 3146(a) (3). Copies to U.S. Atty & Yelsky. (5/12/71).
8/16/71	Minutes of proceedings filed. Deft arraigned, plea of not guilty entered; bond continued. Green, J. Parise, R.
8/17/71	Motion of deft to suppress and return property illegally seized with memorandum in support filed. Copy mailed.
8/25/71	Supplemental memorandum in support of motion for suppression and return of property illegally seized filed. Copy mailed.
8/27/71	Memorandum of Govt. in opposition to motion of deft. for suppression and return of property filed. Copy mailed 8/27/71.
8/31/71	Reply of deft to Govt's memo. in opposition to deft's motion for suppression and return of illegally seized evidence filed. Copy mailed 8/31/71.
8/27/71	Minutes of proceedings filed. Immunity Hearing begun & concluded; Battisti, J. Parr
9/3/71	Supplemental memo. of Govt in opposition to deft's motion for suppression and return of property seized. Copy mailed 9/3/71.
9/23/71	Order continuing Motion to suppress for pre-Trial hearing; further order that Court does not believe that any seizure other than the weapons is relevant to this case, & other items of evidence to which the motion is directed need not be considered herein. The issue of the Sufficiency of the affidavit can be deferred until the evidentiary hearing, for if it is determined that there was no probable cause to seize the weapons the sufficiency of the affidavit becomes moot filed. Green, J. True Copies to U.S. Atty & Gold (Noted 9/29/71)

Date	Proceedings
10/1/71	Memorandum Opinion & order suppressing evidence seized as search went beyond scope of search warrant & warrant was not based upon probable cause; further that Calandra need not answer questions before Grand Jury based on this evidence; further directing that evidence seized is to be returned to Calandra forthwith filed. Battisti, J. Copies handed to Rotatori & Gary. (Noted 10/1/71.)
10/29/71	Motion by U.S.A. to stay execution of the Court's order suppressing evidence and ordering the return of seized property filed. Copy mailed 10/29/71.
10/29/71	Notice of Appeal by U.S.A. filed. Copy by clerk to U.S. Atty. & Rotatori & U.S. Court of Appeals.
11/2/71	Endorsed order granting motion of U.S.A. to stay execution if Court's order suppressing evidence and ordering return of seized property. Battisti, J. Copies mailed to Olah & Rotatori. (Noted: 11/2/71).
11/4/71	Motion of Deft Calandra for reconsideration, in part, of Ct's Order Staying execution of the return of seized property filed. Copy mailed 11/4/71.
11/5/71	Response of U.S. to Deft John P. Calandra's Motion for reconsideration of the Court's Order staying the execution of the Return of seized property pending appeal filed. Copy mailed 11/5/71.
11/12/71	Endorsed Order granting motion of Defts for reconsideration & directing that copies of the Stock Certificates are to be made & Transmitted to the Dept of Justice. Battisti, J. Copies mailed to Margolis & Rotatori (Noted 11/16/71).
11/22/71	Transcript of Proceedings filed before Battisti, J. on 8/27/71 filed. Parise, R.
11/27/71	Memorandum of U.S.A. in support of motion of U.S.A. to immunize John P. Calandra and compel testimony pur. to T. 18, Sec. 2514 filed. Copy mailed 8/27/71.

Date	Proceedings
12/24/71	Request of Respondent for postponement of hearing on application for immunity order filed.
12/24/71	Memorandum of Respondent in support of request for postponement of hearing on application for immunity order filed.
12/24/71	Petition of U.S.A. for order of immunization and to compel testimony before Grand Jury filed.
12/24/71	Affidavit of Robert D. Gary filed.
12/24/71	Designation of record for Appeal filed.

UNITED STATES DISTRICT COURT
FOR THE
EASTERN DIVISION OF THE NORTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA VS. Premises located 700 East 163rd Street, Cleveland, Ohio, a two-story beige brick building, with two doors facing 163rd Street, "Royal Machine and Tool Company" is printed on side located on east side of 163rd Street	Commissioner's Docket No. 8 Case No. 3777 Search Warrant

To CHARLES G. CUSICK, SAC, Cleveland, or any other FBI Agent.

Affidavit having been made before me by Special Agent JOSEPH G. MASTERSON, that he has reason to believe that on the premises known as 700 East 163rd Street, Cleveland, Ohio, a two-story beige brick building, with two doors facing 163rd Street, "Royal Machine and Tool Company" is printed on side located on east side of 163rd Street in the Northern District of Ohio there is now being concealed certain property, namely bookmaking records and wagering paraphernalia consisting of but not limited to betting slips and cash, bet notices, and books of records which are intended for uses in violation of Sections 371, 1084, and 1952, Title 18, United States Code.

and as I am satisfied that there is probable cause to believe that the property so described is being concealed on the premises above described and that the foregoing grounds for application or issuance of the search warrant exist.

You are hereby commanded to search forthwith the place named for the property specified, serving this warrant and

making the search in the daytime [1] and if the property be found there to seize it, leaving a copy of this warrant and a receipt for the property taken, and prepare a written inventory of the property seized and return this warrant and bring the property before me within ten days of this date, as required by law.

Dated this 11th day of December, 1970

/s/ Clifford E. Bruce,
U.S. Commissioner.

[1] The Federal Rules of Criminal Procedure provide: "The warrant shall direct that it be served in the daytime, but if the affidavits are positive that the property is on the person or in the place to be searched, the warrant may direct that it be served at any time." (Rule 41C)

RETURN

I received the attached search warrant December 11, 1970, and have executed it as follows:

On December 15, 1970 at 12:05 o'clock PM, I searched the premises described in the warrant and

I left a copy of the warrant with John CALANDRA together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

This is to certify that on December 15, 1970 at 4:45 P.M., Special Agents of the Federal Bureau of Investigation, U.S. Department of Justice, at the time of conducting a search of my premises at 700 E. 163rd St., Cleveland, Ohio, obtained the above-listed items. I further certify that the above represents all that was obtained by Special Agents of the Federal Bureau of Investigation, U.S. Department of Justice.

Signed

JOHN P. CALANDRA refused to sign.

This inventory was made in the presence of Special Agent RICHARD MOHR, JOHN RELIC, JOHN CALANDRA and JOHN CALANDRA JR.

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

/s/ Thomas J. Rordin

Subscribed and sworn to and returned before me this 18th day of December, 1970.

/s/ Clifford E. Bruce
U.S. Commissioner.

INVENTORY

From Desk of Lynn Smith:

1) Football parlay card (1)
2) Pro football schedule

From stand in back of first desk in first rear room by lavatory wall:

1) tear sheet from desk pad containing telephone numbers

From File Cabinet in rear of back office with combination lock on top drawer:

1) grey card holder containing cognovit notes and other notes, loose papers and cards indicating names of persons and their indebtedness

From top of back desk in back office:

1) Address book with numerous notations and loose pieces of paper with names and addresses and phone numbers
2) TR 1 piece with Hammond Type Co., TR 11 pieces of Allan United States Steel Corp paper with notations of them.
3) 2 adding machine tapes
4) 2 pieces of paper clipped together with one a 4" x 6" card and a small piece of paper.
5) An envelope containing 2 pieces of paper

From desk in back office by lavatory:

1) Yellow pad with names and figures

From lock top drawer of File Cabinet in rear office:

1) Folder containing miscellaneous pieces of paper pertaining to stock certificates and the following stocks:
   (1) listed to Lillian E. Schmiel
      1. 50 shares of Tenna Corp. stk # 10224
      2. 100 shares of Tenna Corp. stk # 26351
      3. 100 shares of Tenna Corp. stk # 26354
      4. 100 shares of Tenna Corp. stk # 26355
      5. 100 shares of Tenna Corp. stk # 26356
      6. 100 shares of Tenna Corp. stk # 26357
      7. 100 shares of Executive House, Inc. stk # C 26035

INVENTORY

8. 100 shares of Executive House, Inc. stk # C 26036
9. 75 shares of Executive House, Inc. stk # C 03700
10. 100 shares of General Mortgage Investments stk # C 13589
11. 100 shares of Associated Oil & Gas Co. stk # H 26829
12. 100 shares of Associated Oil & Gas Co. stk # H 26828
13. 100 shares of North Central Airlines, Inc. stk # MC 30204
14. 100 shares of Transducer Systems, Inc. stk # N 2728
15. 100 shares of Alcoa Standard Corp. stk # CC 11096
16. 100 shares of Alcoa Standard Corp. stk # CC 11095
17. 100 shares of Alcoa Standard Corp. stk # CC 9133
18. 100 shares of Boston Capital Corp. stk # BC 83603
19. 100 shares of Boston Capital Corp. stk # BC 83604
20. 100 shares of Boston Capital Corp. stk # BC 83605
21. 300 shares of Boston Capital Corp. stk # 202418
22. 11 shares of Modern Food, Inc. stk # 17324
23. 100 shares of Modern Food, Inc. stk # 6408
24. 10 shares of Modern Food, Inc. stk # 10929
25. 4 shares of Fisher Foods, Inc. stk # C 026083
26. 2 shares of Fisher Foods, Inc. stk # C 021064
27. 2 shares of Fisher Foods, Inc. stk # C 018234
28. 1 share of H. M. Hooper Co. stk # C 10077
29. 14 shares of Worthington Steel stk # 6334
30. 100 shares of Mite Corp. stk # Y 23709
31. 100 shares of Mite Corp. stk # Y 23710
32. 100 shares of Mite Corp. stk # Y 23711

INVENTORY

Items from Folder from locked drawer of back file cabinet, continued

33. 100 shares of Benguet Consolidated Inc. stk # N 779038
34. 100 shares of Benguet Consolidated Inc. stk # N 779039

(2) listed to Martha Delsanter
1. 100 shares of Executive House, Inc. stk # C 27173
2. 100 shares of Executive House, Inc. stk # C 27181
3. 100 shares of Executive House, Inc. stk # C 26393
4. 100 shares of Executive House, Inc. stk # C 26394

(3) listed to John Livavoli
1. 100 shares of Executive House, Inc. stk # C 23976
2. 100 shares of Executive House, Inc. stk # C 23977

(4) listed to Leo Moceri
1. 100 shares of Executive House, Inc. stk # C 26395
2. 100 shares of Executive House, Inc. stk # C 26396
3. 100 shares of Executive House, Inc. stk # C 26397

(5) listed to John P. Calandra
1. 100 shares of Modern Foods, Inc. stk # 7218
2. 10 shares of Modern Foods, Inc., stk # 10610
3. 11 shares of Modern Foods, Inc., stk # 16642

UNITED STATES DISTRICT COURT
FOR THE
EASTERN DIVISION OF THE NORTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA VS. Premises located 700 East 163rd Street, Cleveland, Ohio, a two-story beige brick building, with two doors facing 163rd Street, "Royal Machine and Tool Company" is printed on side located on east side of 163rd Street	Commissioner's Docket No. 8 Case No. 3777 Affidavit for Search Warrant

BEFORE _____
(Name of Commissioner)

_____
(Address of Commissioner)

The undersigned being duly sworn deposes and says:

That he has reason to believe [1] that on the premises known as 700 East 163rd Street, Cleveland, Ohio, a two-story beige brick building, with two doors facing 163rd Street, "Royal Machine and Tool Company" is printed on side located on east side of 163rd Street in the Northern District of Ohio there is now being concealed certain property, namely book-making records and wagering paraphernalia consisting of but not limited to betting slips and cash, bet notices, and books of records.

which are intended for uses in violation of Sections 371, 1084, and 1952, Title 18, United States Code.

---

[1] The Federal Rules of Criminal Procedure provide: "The warrant shall direct that it be served in the daytime, but if the affidavits are positive that the property is on the person or in the place to be searched, the warrant may direct that it be served at any time." (Rule 41C)

And that the facts tending to establish the foregoing grounds for issuance of a Search Warrant are as follows: (See attached affidavit.)

/s/ Joseph G. Masterson
Special Agent FBI

Sworn to before me, and subscribed in my presence, December 11, 1970

/s/ Clifford E. Bruce
United States Commissioner.

AFFIDAVIT

The undersigned being duly sworn deposes and says:

1. Affiant is employed as a Special Agent of the Federal Bureau of Investigation and has continuously held that position for the past five and one-half years. Affiant has been assigned since April, 1969, to the investigation of gambling matters within the jurisdiction of the Cleveland Division of the Federal Bureau of Investigation.

2. Affiant has had supervision of the investigation of the gambling activities of JOSEPH J. LANESE, hereinafter referred to as JOSEPH LANESE, since July, 1969.

3. Affiant has been in contact with other Special Agents of the Cleveland Division assigned at Youngstown, Ohio, as well as other Agents assigned at Cleveland, Ohio, and has read this affidavit and is satisfied that the information contained therein is reliable. Affiant adopts and incorporates the information contained herein as his affidavit.

4. Based on the information contained herein, affiant has reason to believe and does believe that JOSEPH LANESE has made interestate telephone calls to obtain wagering information which he has subsequently disseminated to ANTHONY DELSANTER and other engaged in the business of booking and wagering and have utilized this information, all in violation of Title 18, Sections 371, 1084 and 1952, United States Code.

JOSEPH LANESE AND ANTHONY DELSANTER,
also known as Tony and Tony the Dope

Pursuant to a court order signed by U.S. District Court Judge FRANK J. BATTISTI, Northern District of Ohio, at 12:10 p.m., November 9, 1970, an electronic surveillance was established on the two telephones located at 20470 Naumann, Euclid, Ohio. This surveillance was terminated on November 23, 1970.

Records of the Ohio Bell Telephone Company reflect that 486-1552 and 486-1142 are listed to JOSEPH LANESE at his residence, 20470 Naumann, Cleveland, Ohio.

The above court order further authorized electronic surveillances of telephone numbers 531-9676 and 531-9855, located at Gray Drug Store, 670 East 185th Street, Cleveland, Ohio, and telephone number 531-9899, which is located in the Top Hat Tavern, 661 East 185th Street, Euclid, Ohio. The court order authorized the utilization of the electronic surveillances on the telephones at Gray Drug Store and The Top Hat Tavern, whenever physical surveillance placed JOSEPH LANESE in Gray Drug Store or the Top Hat Tavern. The electronic surveillances on the telephones began on November 9, 1970, and was terminated on November 23, 1970.

JOSEPH LANESE has been placed at the above-mentioned residence, 20470 Naumann Avenue, by physical surveillance by Agents of the FBI and by name through monitoring of the telephones pursuant to this court order on November 10 through 23, 1970.

JOSEPH LANESE has been placed at Gray Drug Store, 670 East 185th Street, Cleveland, Ohio, by physical surveillance by Agents of the FBI and by name through monitoring of the telephones pursuant to this court order on November 9, 10, 11, 12, 13, and 14, 1970.

JOSEPH LANESE has been placed at the Top Hat Tavern, 661 East 185th Street, Euclid, Ohio, by physical surveillance by Agents of the FBI and by name through monitoring of the telephone pursuant to this court order on November 9, 10, 11, 12, 13, and 14, 1970.

FBI surveillance has shown JOSEPH LANESE to operate a 1969 Cadillac, with metallic green bottom and black vinyl top, sedan, four door, bearing 1970 Ohio license QE-211.

On November 12, 1970, JOSEPH LANESE, placed a long distance call to either telephone number 331-8335 or 771-0845, from telephone number 531-9676, Gray Drug Store, at about 1:54 p.m., through the operator. The operator first tried number 331-8335 and it was busy, and then was told by JOSEPH LANESE to try 771-0845 and same area cole. He informed the operator that these two phones were in the same house. The operator tried this number, 771-0845, and it was also busy. She again tried them both, and the call was completed on the second try. A male answered the phone and JOE said "BILL." BILL informed JOE to wait a minute. BILL then gave JOE the betting line on two football games, Georgia plus twenty and Boston College plus six. BILL informed JOE that there were no horses.

Investigation by FBI Agents at Pittsburgh, Pennsylvania, determined that telephone numbers 331-8335 and 771-0845 are listed to ANTHONY J. CIHAL and WILLIAM CIHAL, 3905 Mayfair Street, Pittsburgh, Pennsylvania.

The above sequence shows that LANESE received wagering information concerning the Georgia and Boston College games from Pittsburgh, Pennsylvania. The information concerned the point spread on the Georgia and Boston College football games.

ANTHONY DELSANTER has been identified by physical surveillance by FBI Agents as having been in the Top Hat Tavern with JOSEPH LANESE and by his name and his distinctive voice and accent through monitoring of the telephones pursuant to this court order.

An incoming call was received on telephone number 531-9899, at 1:52 p.m., November 12, 1970, for Grandpa from ANTHONY DELSANTER. He was told that JOE was across the street, and he asked if someone could go get him. While waiting for JOE to come to the phone, DELSANTER made reference to some horse races in Chicago and Cleveland. DELSANTER states that he gave me one horse in Chicago and one in Cleveland. JOSEPH LANESE comes on the line and gives the betting line, Georgia plus twenty and Boston College plus six, he had just received from WILLIAM CIHAL, Pittsburgh, Pennsylvania, to ANTHONY DELSANTER. DELSANTER states that he will be at Cherry's in about thirty minutes.

On November 12, 1970, at 2:00 p.m., from telephone number 531-9899, JOSEPH LANESE called 795-2949. He referred to the male answering as GARY. He discussed line information with him, then layed off a $400.00 bet on Georgia plus twenty. Investigation by FBI Agents at Cleveland, Ohio, determined that this number is listed to GARY STIVER, 1960 East 126th Street, Cleveland, Ohio.

The above sequence shows that LANESE furnished the wagering information concerning the Georgia and Boston College football games, he obtained from WILLIAM CIHAL in Pittsburgh, Pennsylvania, to ANTHONY DELSANTER, who is in the Warren, Ohio area, when calling LANESE. After discussing the line information, DELSANTER and LANESE decide to lay off bets to GARY STIVER on the line information obtained from CIHAL in Pittsburgh, Pennsylvania.

On November 13, 1970, there was an incoming call on telephone number 531-9899. The person calling asked for

Grandpa. JOSEPH LANESE comes to the phone and discusses tickets and advises he will send them to caller's, ANTHONY DELSANTER, address at 373 Central Parkway. DELSANTER and LANESE discuss the betting line on certain football games and plays they have made, and bets with GARY.

DELSANTER stated he is at Cherry's and LANESE states you're right near pay station and tells DELSANTER to call that guy, and DELSANTER states "BILL". LANESE then gives the following numbers in Italian and English, 412-331-8335 and 412-771-0845. DELSANTER states he had them written down, but could not find them. DELSANTER states that number 771-0845 is the one he used to call, all the time. DELSANTER is to call LANESE back, if he gets something.

On November 13, 1970, at about 2:40 p.m., there was an incoming call to the Top Hat Tavern, 531-9899. JOSEPH LANESE come to the phone and caller, GARY, states that TONY just called him and told him to call LANESE and give him a message, "9th at Laurel, Bet Bravo, twice as much and same race, Last Hill, half as much, and nothing on football." GARY states he's, referring to TONY, two, two and $1.00 to place. LANESE and GARY discuss TONY's betting on the horse races.

The above sequence indicates that ANTHONY DELSANTER on instructions from JOSEPH LANESE, called WILLIAM CIHAL on either telephone number 412-331-8335 or 412-771-0845, in Pittsburgh, Pennsylvania, and obtained information on two horses in the 9th race at Laurel, Maryland. CIHAL further stated that DELSANTER advised there was no new information or line on the football game. This information was then passed on to GARY, who accepted two bets from DELSANTER on the horse race at Laurel, Maryland. GARY then called JOSEPH LANESE and furnished the information about no change in the football line and the horse race from DELSANTER to LANESE.

On November 14, 1970, from telephone number 531-9676, JOSEPH LANESE called long distance, through the operator, to area code 412 and telephone number 331-8335. LANESE advised the operator he was calling from 531-9674. JOSEPH LANESE referred to the person answering as BILL, and BILL furnished part of the college and professional football line to LANESE. LANESE stated that was enough, he has the rest.

Numerous calls were made from 531-9899, 531-9855, 531-9676 to the above Pittsburgh, Pennsylvania numbers 331-8335 and 771-0845.

After receiving the above information, LANESE would repeatedly furnish this information to numerous individuals, either through the use of telephone numbers 531-9855, 531-9676, or through the use of telephone numbers 486-1142 and 486-1552, located at 20470 Naumann Avenue, Euclid, Ohio, which is the residence of JOSEPH LANESE.

Informant 1 advised on December 1, 1970, that as of that date, JOSEPH LANESE continues to make book on the east side of Cleveland on 185th Street and he also works out of his home. DELSANTER continues in his gambling operation in the Warren, Ohio area, and no one can book in Warren, Ohio area without his personal O.K. DELSANTER has four or five persons working for him taking bets and handling his action. DELSANTER works out of three or four locations in the Warren, Ohio area.

JOSEPH LANESE, utilizing one of the following telephones 531-9899, 531-9855, 531-9676, 486-1142, and 486-1552, would furnish football line information to numerous individuals. Among the individuals who have been identified as receiving this information are ANTHONY DELSANTER, also known as Tony the Dope; RONALD J. RADO; JOSEPH SPAGANLO, also known as Joseph Spagnola; JOHN NARDI; JOHN CALANDRA; CHUCKIE COMELLA; CHARLIE MOORE; RICHARD STEWART; FREDDIE BENTOFF, and GARY STIVER.

During the time of the court order, there were numerous occasions when JOSEPH LANESE would call ANTHOHY DELSANTER at his residence in Warren, Ohio, and have discussions concerning their wagering activity.

The affiant, based on the facts set forth above, now has reason to believe and does believe that on the premises further described hereinafter and on the persons of JOSEPH LANESE and ANTHONY DELSANTER and in LANESE'S vehicle, there is located bookmaking records and wagering paraphernalia consisting of but not limited to betting slips, cash, bet notices, and books of account in violation Sections 371, 1084 and 1952, Title 18, United States Code. JOSEPH LANESE'S premises are further described as a two-story white frame house, with red brick front on the lower portion of the house, and detached garage on the left side of the house towards the rear and at the end of a driveway, at 20470 Naumann Avenue, Euclid, Ohio. Investigation by FBI Agents reveal that LANESE continuously utilizes and drives a 1969 Cadillac, metallic green bottom

and black vinyl top, four door, with 1970 Ohio license QE-211. The Department of Motor Vehicles for the State of Ohio has advised that 1970 Ohio license QE-211 is registered to NICHOLAS DICILLO, 6751 Gates Mills Boulevard, Gates Mills Village, Ohio. Surveillance has placed JOSEPH LANESE in this vehicle on numerous occasions, during the past six months, and he being the only male driver.

ANTHONY DELSANTER's residence is more fully described as a two-story frame dwelling, white in color with blue trim, with what appears to have been an attached garage, which has been converted to a beauty shop and is known as Marty's Hair Fashion. The dwelling is located at 373 Central Parkway on the east side of the street, in Warren, Ohio.

CHERRY'S TOP OF THE MALL RESTAURANT

Investigation by Agents of the Federal Bureau of Investigation has revealed that telephone number 545-2521 is listed to Cherry's Top of the Mall Restaurant, Eastwood Mall, Niles, Ohio.

Pursuant to a court order signed by U.S. District Court Judge FRANK J. BATTISTI, Northern District of Ohio, 12:10 p.m., November 9, 1970, an electron surveillance was established on five telephones being utilized by JOSEPH LANESE in his bookmaking activity. Two of these telephones were located at 20470 Naumann Avenue, Euclid, Ohio, the residence of JOSEPH LANESE.

Numerous conversations monitored over the telephones at JOSEPH LANESE's residence and the other telephones during the period of November 9 through 23, 1970, reflect the following concerning Cherry's Top of the Mall.

On November 13, 1970, there was an incoming call on telephone number 531-9899. The person calling asked for Grandpa. JOSEPH LANESE comes to the phone and discusses tickets. The person calling was referred to as TONY and gave his address as 373 Central Parkway, which is the address of ANTHONY DELSANTER. DELSANTER stated that he was at Cherry's and LANESE instructed DELSANTER to use the station there, and call WILLIAM CIHAL in Pittsburgh, Pennsylvania at telephone numbers 412-331-8335 or 771-0845.

On November 13, 1970, at about 7:29 p.m., JOSEPH LANESE made a long distance call to 545-2521, Niles, Ohio, from 486-1552, advised ANTHONY DELSANTER, also known as Tony

the Dope that there was a one game switch. On November 17, 1970, at about 5:11 p.m., JOSEPH LANESE called telephone number 545-2521 and gave ANTHONY DELSANTER, who gets on the line, horse race results of "Don George" in the last at Laurel. LANESE advises DELSANTER that he has GARY's line, but it was not good, and was going out to make some calls.

During the course of the monitoring, numerous calls were made to and from Cherry's Top of the Mall Restaurant wherein JOSEPH LANESE furnished football line information to ANTHONY DELSANTER. On one occasion, DELSANTER stated he made a mistake and had Cherry's sheet.

The affiant, based upon the facts set forth above, now has reason to believe, and does believe, that on the premises, further described hereinafter, known as Cherry's Top of the Mall Restaurant, Eastwood Mall, Niles, Ohio, there are located bookmaking records and wagering paraphernalia consisting of, but not limited to, betting slips and cash, bet notices, and books of account, in violation of Sections 371, 1084, and 1952, Title 18, U.S. Code.

Cherry's Top of the Mall Restaurant is located on the second floor of the Eastwood Mall near the center and south entrance to the mall. It is located above McKelvey's Loft and is east of Strouss Department Store. Cherry's has a brick type front and operates as a restaurant.

JOHN CALANDRA

JOHN CALANDRA has been identified by name and phone number on numerous incoming and outgoing telephone calls to JOE LANESE while LANESE was at his residence or at the Top Hat Tavern. CALANDRA and LANESE have discussed point spreads and bets they are making.

On Sunday, November 15, 1970, at 8:52 AM, LANESE called 381-8414 to advise that he would be home for the next two hours and then he was going to a phone.

The conversation disclosed the betting relationship between JOHN CALANDRA and JOSEPH LANESE. The conversation indicates that CALANDRA and LANESE bet on seven games and won five. The reference to "changing" refers to the line and LANESE indicated that there were no changes and that he would make a call from another phone to get any changes. He indicated that the call was being made from another phone due to LANESE's belief that his phone was "bugged".

Physical surveillance of JOSEPH LANESE placed him at the Pancake House, 22780 Shore Center Drive, on public phone number 731-9794, during period 11:30 AM to 11:50 AM. Records of the Ohio Bell Telephone Company reflect that a call was made to 412-331-8335 in Pittsburgh, on November 15, 1970, at 11:42 AM. As previously set out, this is listed to WILLIAM CIHAL.

On November 15, 1970, at 12:51 PM, LANESE called 231-9635, the Fai-Com Club and asked for JOHN CALANDRA from his home phone 486-1552. LANESE told CALANDRA to add Detroit. CALANDRA asked what the point spread was and LANESE said it was eight. CALANDRA asked if that was the only bet and LANESE told him to add it to the others. CALANDRA then added up the others and said they had six others.

The above set of facts indicate that at 8:52 AM JOSEPH LANESE called JOHN CALANDRA and advised him that he had no changes regarding the bets they had made for Sunday, November 15, 1970, but that LANESE would check later. The call to a known bookmaker at 11:50 AM which was almost two hours later, as LANESE indicated, shows that he checked for any last minute games and changes in the line. After several unsuccessful tries due to the line being busy, LANESE contacted CALANDRA at 12:51 AM and gave him the change he had received, which was for CALANDRA to bet Detroit plus eight.

During the period of the electronic surveillance, LANESE contacted CALANDRA at 381-8414 listed to JOHN CALANDRA, 700 Quilliams. On November 13, 1970, JOSEPH LANESE was surveilled to 700 East 163rd Street, a brick building with name Royal Machine and Tool Co. on the side of the building. LANESE was driving a green with black top, 1969 Cadillac, Ohio license QE 211. Investigation by Special Agents of the FBI revealed that JOHN CALANDRA is president and owner of Royal Machine and Tool Company, 700 East 163rd.

On November 16, 1970, at 7:15 PM, a green color Pontiac, four door vehicle, bearing 1970 Ohio license QB 745, was observed parked in front of LANESE's residence, 20470 Naumann Avenue. The Department of Motor Vehicles for the State of Ohio, advised that 1970 Ohio license is listed to the Royal Machine and Tool Company, 700 East. 163rd Street, Cleveland, Ohio. At 7:22 PM, JOSEPH LANESE called

number 231-9635 and conversed with ANTHONY DELSANTER and advised that he and JOHNNY were coming over to see him. Surveillance by Special Agents of the FBI, disclosed both above described vehicles in the vicinity of the Fai-Com Club, 12113 Mayfield Road.

The affiant, based on the facts set forth above, now has reason to believe and does believe that on the premises further described hereinafter and the person of JOHN CALANDRA, there are located bookmaking records and wagering paraphernalia consisting of but not limited to betting slips, cash, bet notices and books of account in violation of Section 371, 1084 and 1952, Title 18, United States Code.

JOHN CALANDRA's residence, 700 Quilliams, is more fully described as a two story home, constructed of brick with gray stone and white aluminum in front, with gray shingle roof. Two car attached garage on south side. Residence on northwest corner of Fenley Road and Quilliams Road.

The Royal Machine and Tool Company, 700 East 163rd, is more fully described as a two story beige brick building. The building has two doors on the side facing 163rd. Above the second story windows in the printing, "ROYAL MACHINE AND TOOL COMPANY." The left door has a storm door and the address 700 above it. The door on the right is unmarked. If you turn off of St. Clair onto 163rd, the building is located on the left side of the street on the corner at the end of the block.

Informant 1 advised on December 4, 1970, that JOHN CALANDRA, as of that date, would accept bets and lay off bets, on sports event. CALANDRA is a close associate of ANTHONY DELSANTER. CALANDRA uses his home and office on East 163rd Street for his bookmaking operation.

JOHN NARDI

On November 13, 1970, at 1:37 p.m., JOSEPH LANESE called 621-7625, and furnished person he called JOHN, with football line information he obtained from WILLIAM CIHAL, Pittsburgh, Pennsylvania. Telephone number 621-7625, according to the Ohio Bell Telephone Company, is a branch number to 621-5023, and is listed to the Vending Machine Service Employee's Local Union Number 410, in room 202, 2070 East 22nd Street, Cleveland, Ohio. Investigation by Special Agents of the FBI at Cleveland, Ohio, disclosed

that JOHN NARDI is Secretary-Treasurer of Local 410, 2070 East 22nd Street.

On November 13, 1970, at about 7:42 p.m., JOSEPH LANESE called from telephone number 486-1552 to telephone number 321-1143, which was recorded during the monitoring of 486-1552, from November 9, 1970, through November 23, 1970. According to the records of Ohio Bell Telephone Company, telephone number 321-1143 is listed to JOHN NARDI, 3924 Colony Road, South Euclid, Ohio. LANESE furnished person he called JOHN, football line information on college and professional football games according to their number on the line sheet. This information was for teams to bet on.

On November 15, 1970, at about 1:29 p.m., JOSEPH LANESE called telephone number 321-1143 from 486-1552 and talked with JOHN, and they discussed the football line. During the period of the intercepted conversations, numerous incoming and outgoing calls using the name JOHN were monitored. These conversations were with JOSEPH LANESE and consisted of wagering information and bets.

The affiant, based on the facts set forth above, now has reason to believe and does believe, that on the premises further described hereinafter and the person of JOHN NARDI there are located bookmaking records and wagering paraphernalia consisting of but not limited to, betting slips, cash, bet notices, and books of accounts, in violation of Sections 371, 1084 and 1952, Title 18, U. S. Code. JOHN NARDI's premises are further described as a one and a half story house with white siding on sides and rear, and red brick in front, green aluminum awnings, with a one car attached garage on east end of the residence. Sign on front stoop reads "NARDI's", 3924. Room 202 is located in the Vending Machine Service Employee's Local Union Number 410, 2070 East 22nd Street, which is further described as a two story brownish brick building with one front entrance, eight windows on the first floor front and ten windows on the top floor front; this building has a sign on the upper left front which reads, "Teamster Council 41". On a plaque over the front entrance is printed I. B. of T. C. and AF of L, and S and H of A. This building is located on west side of East 22nd Street between Carnegie and Prospect Streets and has a flag pole on the top.

Informant 1 advised on November 29, 1970, that JOHN NARDI continues to make book on sports events. He believed

NARDI was working out of the Union Hall near Prospect Avenue.

Informant 5 advised that as of December 3, 1970, JOHN NARDI operates a bookmaking business out of his residence and out of the Union Hall on 22nd Street just south of Prospect Avenue. He advised that NARDI accepts bets in the amounts of over one hundred dollars.

GARY STIVER

GARY STIVER has been identified by name and phone number on numerous incoming and outgoing telephone calls. LANESE, on numerous occasions, placed wagers with STIVER on football games, that he had obtained line information on from WILLIAM CIHAL, in Pittsburgh, Pennsylvania. JOSEPH LANESE and ANTHONY DELSANTER, on numerous occasions, have both exchanged wagering information in form of the college and professional including the line and horse information LANESE receives from Pittsburgh, Pennsylvania and individual betting. There are numerous calls to 795-2949. According to the records of the Ohio Bell Telephone Company, this number is listed to GARY STIVER, 1960 East 126th Street, Cleveland, Ohio. This is the address where GARY STIVER resides.

FBI surveillance has shown GARY STIVER to operate a 1969 Buick, two door, bearing 1970 Ohio license JJ 3262.

The affiant, based on the facts set forth above, now has reason to believe and does believe, that on the premises further described hereinafter and on the person of GARY STIVER and in STIVER's vehicle, there is located bookmaking records and wagering paraphernalia consisting of but not limited to betting slips, cash, bet notices, and books of account in violation Section 371, 1084 and 1952, Title 18, United States Code. STIVER's premises are further described as a two and one half story wooden frame house faded light color, with two front entrances facing East 126th Street. Brick pillars in front support the second floor porch and it is the last residence on the left side of the street, at 1960 East 126th Street, Cleveland, Ohio.

Informant 3 advised that as of as late as December 1, 1970, that GARY STIVER was continuing to make book on sports events and that he accepted action on horses as well as sports. He advised that STIVER continues to be an agent or telephone man for another bookmaker he is acquainted

with, and has bet with, whose name is LOUIE HELLER. STIVER is still located on East 126th Street.

CHARLIE MOORE

CHARLIE MOORE has been identified by name and phone number on numerous incoming and outgoing telephone calls. JOSEPH LANESE, on numerous occasions, have exchanged wagering information in form of the college and professional football lines. During the monitoring, CHARLIE MOORE, made numerous references to his booking and taking bets. These are numerous calls to 759-9311 and 759-9594. According to the records of the Ohio Bell Telephone Company, these numbers are listed to THERESA MOORE and CHARLES MOORE, respectively, at 1198 Will-O-Wood Drive, Liberty Township, Ohio. This is the address where CHARLIE MOORE resides.

The affiant, based on the facts set forth above, now has reason to believe and does believe, that on the premises further described hereinafter and the person of CHARLIE MOORE, there are located bookmaking records and wagering paraphernalia consisting of but not limited to betting slips, cash, bet notices, and books of account in violation of Sections 371, 1084, and 1952, Title 18, U.S. Code. CHARLIE MOORE's premises are further described as a one-story ranch style brick residence with attached two car garage located at 1198 Will-O-Wood Drive, Liberty Township, Ohio. This residence is the last house on the north side of Will-O-Wood Drive which is a dead-end street.

Informant 4 stated on December 7, 1970, that as of that time, CHARLIE MOORE continues to make book on sports activities out of his residence, on both college and professional games. He also handles some horse action. MOORE will accept bets as high as $500.00 on a single event.

RONNIE RADO

During the time of the court order, there were outgoing calls to RONNY at 531-9590 and 481-9621. Investigation by Special Agents of the FBI revealed that 531-9590 is listed to RONALD J. RADO, 19080 Newton, Euclid, Ohio, and 481-9621 is listed to RONNY's Tavern, 15610 Waterloo Road, Cleveland, Ohio, and billed to RONNY RADO.

During the period of the wire interceptions, LANESE was

in frequent contact with RADO to assist LANESE in placing bets. On November 11, 1970, at 2:12 p.m., LANESE contacted RADO at 481-9621 and they had a discussion of money that RADO owed LANESE. During the discussion, LANESE told RADO that he was not to hold any of his bets which RADO had apparently done, and now owed LANESE money because LANESE had won on the bets. During the conversation, LANESE said that he didn't care what RADO did with the rest of the bets he took, but that he was not to hold any of LANESE's bets. RADO mentioned that he had just paid LANESE $1000 and would pay the remainder tomorrow.

On November 14, 1970, at 1:16 p.m., there was an incoming call from RONNY at which time RONNY gave LANESE two teams to bet and LANESE told him to bet one of them, Virginia Tech for $200.

The following week, on November 20, 1970, at 6:13 p.m., LANESE called RONNY at 481-9621 and told RADO to get him the line. During the conversation, LANESE accused RADO of telling everyone "who and what he was doing it for", i.e., that LANESE was placing bets through RADO with other bookmakers.

On November 21, 1970, at 7:34 p.m., LANESE dialed 531-9590 and talked to RONNY who gave him the line on several games. LANESE told him to bet $2.00 on all three favorites, which in gambling terms means $200 on each game. RADO took the bets and indicated that when he placed them for LANESE, he was going to bet the same way for himself.

The affiant, based on the facts set forth in this affidavit, now has reason to believe and does believe that contained on the person of RONALD J. RADO, on the premises further described hereinafter, and in his vehicle, hereinafter described, there are located bookmaking records and wagering paraphernalia consisting of but not limited to, betting slips, cash, bet notices, and books of account, in violation of Sections 371, 1084 and 1952, Title 18, U. S. Code. RADO's residential premises at 19080 Newton, Euclid, Ohio, is more fully described as two story brown brick on first level and grey upper on sides. It has enclosed front porch and a two car wooden garage in rear on south east side of residence.

RONNY's Tavern located at 15610 Waterloo Road, Cleveland, Ohio, is more fully described as a one story brick, brown in color, windowed front, with a sign on the front which reads "RONNY's Tavern Liquor". This building is

located on the south side of Waterloo Road, and the front of the building faces the north.

On November 12, 1970, at 4:45 p.m., a black over gray Buick, Ohio license EE-8042 was observed parked in the driveway of JOSEPH LANESE's residence, 20470 Naumann. Ohio motor vehicle records reflect that EE-8042 is registered to RONNY's Tavern, Inc., 15610 Waterloo, for a 1968 Buick sedan.

Informant 2 advised on December 8, 1970, that RONNY RADO continues to operate a bookmaking business out of the bar he owns on Waterloo Road and his residence. RADO has accepted bets from him for $300.00 on football games. RADO lays off bets for JOSEPH LANESE.

CHUCKIE COMELLA

On November 13, 1970, at about 7:26 p.m., JOSEPH LANESE called from telephone number 486-1552 to telephone number 321-4664, which was recorded during the monitoring of number 486-1552 from November 9, 1970 through November 23, 1970. According to the records of Ohio Bell Telephone Company, telephone number 321-4664 is listed to CHUCKIE COMELLA, 20910 Fairmont Boulevard, Shaker Heights, Ohio. LANESE furnished person he talked with, the line on college and professional football games according to their number on the line sheet. This information was for teams to bet on.

On November 14, 1970, at about 4:30 p.m., JOSEPH LANESE called telephone number 321-4664 and conversed with person he called CHARLES or CHARLIE. They discussed their wagering and betting activity, tickets, outcome of games and his source of scores, DAN TAYLOR of the Cleveland Press Newspaper.

The affiant, based on the facts set forth above, now has reason to believe and does believe, that on the premises further described hereinafter and the person of CHUCKIE COMELLA, there are located bookmaking records and wagering paraphernalia consisting of but not limited to betting slips, cash, bet notices, and books of accounts, in violation of Sections 371, 1084 and 1952, Title 18, U. S. Code. CHUCKIE COMELLA's premises are further described as a split level residence, reddish brick covers one half with wooden or aluminum siding, white in color covering the remainder, with black shutters on two windows, and a two car garage.

Sign on front lawn which reads "20910". This is the residence of CHUCKIE COMELLA.

EAST ONE HUNDRED EIGHTY FIFTH STREET
NEWS AND SPECIALTY MART

The East 185th Street News and Specialty Store, 656 East 185th Street, Cleveland, Ohio, has two telephones located on the premises, telephone numbers 481-0456 and 481-0457, according to the records of the Ohio Bell Telephone Company, Cleveland, Ohio.

Surveillance conducted by the Special Agents of the Federal Bureau of Investigation, Cleveland, Ohio, on September 1, 2, 9, 15, 16, 17, 18 and 24th, 1970, revealed vehicle utilized by JOSEPH LANESE, a 1969 Cadillac, green and black, bearing 1970 Ohio license QE-211, parked in the rear of the East 185th Street News and Specialty Mart. The surveillance also revealed LANESE entering and leaving the East 185th Street News frequently during that time.

Surveillance conducted by Special Agents of the FBI revealed LANESE's car parked in the rear of the news store on November 9, 10, 11, 12, 16, 17, 19, 20, 21, and 23rd, 1970, and observed LANESE either enter or leave the East 185th Street News.

On November 17, 1970, at about 4:58 P.M., JOSEPH LANESE received a telephone call at number 486-1142, which is located in his residence at 20470 Naumann Avenue, from an unknown male caller. LANESE advised the caller that he would have a "line" about 11:30 A.M. Saturday, and to call him at the store, and gave telephone number 481-0456 for the person to call on Saturday.

On Saturday, November 21, 1970, at about 11:14 A.M., JOSEPH LANESE was observed by Special Agent of the FBI to leave his vehicle, a 1969 black over green Cadillac bearing 1970 Ohio license QE-211, parked in the rear of the East 185th Street News and Specialty Store, and enter that establishment through the rear door. At 12:03 P.M. JOSEPH LANESE and two unknown males were observed leaving the East 185th Street News Store.

The affiant, based on the facts set forth above, now has reason to believe and does believe, that on the premises further described hereinafter there is located bookmaking records and wagering paraphernalia consisting of but not limited to betting slips, cash bet notices, and books of ac-

count in violation of Section 371, 1084 and 1952, Title 18, United States Code. The East 185th Street News and Specialty Mart is located at 656 East 185th Street, Cleveland, Ohio, in a one-story brick building with one front and rear entrance. There is one large window in the front of the store, and in the store is an L-shaped counter to the left and rear and a news rack to the right as you enter the store. The counter has a glass top. There is a rectangle sign hanging from the front of the store which reads East 185th Street News. The building is located on the west side of East 185th Street as one faces north, and the building faces the east on East 185th Street.

Characterization of Informants

Informant Number 1 has been an informant of the Cleveland Office of the Federal Bureau of Investigation for approximately seven years and during this period has furnished information to this office in connection with gambling cases on at least twenty-two occasions, which information was corroborated by independent investigation conducted by Agents of the Federal Bureau of Investigation and found to be true and correct. This informant has personal knowledge of the bookmaking activity of Joseph Lanese in that for over an extensive period of time he has himself or personally known of others who have made wagers with or received line information from Joseph Lanese.

Informant Number 2 has been an informant of the Cleveland Office of the Federal Bureau of Investigation for approximately four months and has furnished information to this office in connection with gambling cases on at least three occasions within the past four months, which information was corroborated by independent investigation conducted by Agents of the Federal Bureau of Investigation and found to be true and correct. This informant has personal knowledge as to the scope of this operation from the obtaining of line information and placing of bets, as well as knowledge of others who bet into this bookmaking operation.

Informant Number 3 has been an informant of the Cleveland Office of the Federal Bureau of Investigation for the past eight years and has furnished information to this office in connection with gambling cases on at least twelve occasions within the past three months, which information was

corroborated by independent investigation and was found to be true and correct. This informant has knowledge of this bookmaking operation gained through his acquaintanceship with numerous individuals, who utilize the above bookmaking operation.

Informant Number 4 has provided reliable information for the past seven years to Special Agents of the Federal Bureau of Investigation and on at least 9 occasions in the past 6 months in gambling matters. This information has proven reliable on these occasions and it was substantiated and corroborated by independent investigation and by other sources who have furnished information in the past which has also proven upon investigation examination to be reliable and who are known by Special Agents of the Federal Bureau of Investigation in contact with them to be in a position to provide first-hand knowledge of the events which they relate.

Informant Number 5 has been an informant of the Cleveland Office of the Federal Bureau of Investigation for over eight years and has furnished information to this office in connection with gambling cases on at least five occasions within the past eight months, which information was corroborated by independent investigation conducted by Agents of the Federal Bureau of Investigation and found to be true and correct. This informant has personal knowledge of numerous bookmakers and betters in the Cleveland area as a result of his personal activity in betting.

Further affiant sayeth not.

/s/ Joseph G. Masterson
Signature of Affiant

/s/ Special Agent—FBI
Official Title

Sworn to before me and subscribed in my presence Dec. 11, 1970.

/s/ Clifford E. Brucy
United States Commissioner

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: GRAND JURY INVESTIGATION
JOHN P. CALANDRA

[Filed, Nov. 24, 3:37 PM, '71, Clerk U. S. District Court Northern District of Ohio]

PETITION FOR ORDER OF IMMUNIZATION
AND TO COMPEL TESTIMONY
BEFORE GRAND JURY
18 U.S.C. § 2514

TO THE HONORABLE JUDGE OF THIS COURT:

The United States of America, petitioner, by its attorneys, FREDERICK M. COLEMAN, United States Attorney for the Northern District of Ohio, and ROBERT D. GARY, Special Attorney, United States Department of Justice, respectfully represents to this Honorable Court as follows:

1. On August 17, 1971, JOHN P. CALANDRA was called as a witness, under subpoena, before the United States Grand Jury, which Grand Jury was then conducting an investigation of possible violations of Title 18, United States Code, Sections 892, 893 and 894.

2. On the aforesaid date, JOHN P. CALANDRA refused to answer questions relating to that investigation, invoking his privilege not to incriminate himself under the Fifth Amendment to the United States Constitution.

3. It is the judgment of the United States Attorney for the Northern District of Ohio that the testimony of JOHN P. CALANDRA is necessary to the public interest, and that this application should be made to compel his testimony after a grant of immunity.

4. The judgment of the United States Attorney for the Northern District of Ohio, expressed herein, has been approved by the Honorable JOHN N. MITCHELL, the Attorney General of the United States, who has delegated the Honorable WILL WILSON, Assistant Attorney General, to authorize in writing the making of this application, a copy of which written authorization is attached hereto as Exhibit A.

5. Facts and circumstances more particularly relating to

the pending Grand Jury investigation are set forth in the affidavit of ROBERT D. GARY, Special Attorney, United States Department of Justice, attached hereto as Exhibit B, and incorporated herein by reference.

WHEREFORE, the United States of America requests this Court to Order JOHN P. CALANDRA to answer questions which he has heretofore refused to answer, and to testify relating to all matters pertinent to the pending Grand Jury inquiry, pursuant to the provisions of Title 18, United States Code, Section 2514.

Respectfully submitted,

/s/ Frederick M. Coleman
FREDERICK M. COLEMAN
United States Attorney
Northern District of Ohio
Eastern Division

/s/ Robert D. Gary
ROBERT D. GARY
Special Attorney
U. S. Department of Justice

"EXHIBIT A"

DEPARTMENT OF JUSTICE
WASHINGTON 20530

Aug. 16, 1971

Mr. Frederick M. Coleman
United States Attorney
Cleveland, Ohio

Dear Mr. Coleman:

This is with regard to your request for authorization to seek a grant of immunity in connection with a Federal grand jury investigation of possible violations of 18 U.S.C. 892, 893, and 894.

Upon consideration of your request, I find that the testimony of John Calandra, whom you named in your request, is necessary and in the public interest. Accordingly, you are hereby authorized to seek a grant of immunity for him pursuant to the provisions of 18 U.S.C. 2514 and 2516(1)(f) in the event that he appears before the grand jury and asserts his Fifth Amendment privilege against self-incrimination.

Sincerely,

/s/ Will Wilson
WILL WILSON
Assistant Attorney General

EXHIBIT B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: GRAND JURY INVESTIGATION
JOHN P. CALANDRA, WITNESS

[Filed Nov. 24, 3:37 PM, '71, Clerk U. S. District Court Northern District of Ohio]

AFFIDAVIT

ROBERT D. GARY, having been duly sworn according to law, deposes and says as follows:

I am a Special Attorney of the United States Department of Justice, and, pursuant to a commission signed by the Honorable RICHARD G. KLEINDIENST, Deputy Attorney General, (a copy of which has been filed with the Clerk of the United States District Court for the Northern District of Ohio), I have been authorized to conduct, in the Northern District of Ohio, any kind of legal proceeding, specifically including Grand Jury proceedings, which United States Attorneys are authorized by law to conduct.

The United States Grand Jury has been conducting an investigation, in which I have regularly participated, which has disclosed substantial evidence that JOHN P. CALANDRA was operating a "shylocking" business for JAMES LICAVOLI, ANTHONY DELSANTER, and LEO MOCERI.

It was in connection with this investigation that JOHN P. CALANDRA was subpoenaed on August 17, 1971. At this time, invoking his privilege not to incriminate himself and citing the Fifth Amendment to the United States Constitution, JOHN P. CALANDRA refused to answer questions pertaining to his involvement in these Extortionate Credit Transactions.

The questions that JOHN P. CALANDRA refused to answer were propounded to him by me, and were asked as part of the investigation described herein relating to possible vio-

lations of Title 18, United States Code, Sections 892, 893 and 894.

/s/ Robert D. Gary
ROBERT D. GARY
Special Attorney
U. S. Department of Justice

Sworn to and subscribed before me this 17 day of August, 1971.

/s/ Dorninsa J. Cimino, *Clerk*
T. C. Lawford

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE GRAND JURY PROCEEDINGS, CLEVELAND, OHIO IN THE MATTER OF: JOHN P. CALANDRA	Request for Postponement of Hearing on Application for Immunity Order

[Filed Nov. 24, 11:51 AM, '71, Clerk U.S. District Court Northern District of Ohio]

Respondent, JOHN CALANDRA, by undersigned counsel, respectfully moves pursuant to rules 5(a), 5(b) and 6(d) of the Federal Rules of Civil Procedure, for a postponement of the hearing on the government's Application for Immunity Order. As grounds for this motion Respondent asserts the following:

(1) Respondent was subpoenaed to testify before a Grand Jury on August 17, 1971.

(2) When Respondent was questioned before the Grand Jury, Respondent declined to answer questions propounded by the counsel for the government on the basis of constitutional priviledge arising out of the First, Fourth and Fifth Amendments.

(3) Immediately thereafter, Respondent was served with an Application for a Grant of Immunity pursuant to 18 U.S.C.A. § 2514. Respondent had not previously had the opportunity to examine the application or to analyze the legitimacy of the reasons for the application.

(4) Substantial constitutional questions of great complexity are presented by the application in that it clearly appears that the questions which the government seeks to compel Respondent to answer were derived from evidence obtained as a result of an illegal search of Respondent's premises.

(5) The legality of the search resulting in the acquisition of the information which serves as a factual predicate for the questions propounded by the Grand Jury has been placed in issue in the case of *United States* vs. *John Calandra,* Case #71-300, now pending in this Court. A Motion to Suppress the Evidence seized in this case has

been filed and is now awaiting disposition. A copy of the motion and memorandum in support of the motion are attached hereto as Exhibit A.

(6) The time requested by Respondent is needed to enable Respondent to prepare an answer to the government's Application for Immunity Order which will fully apprise the Court of all issues relevant to the disposition of that application.

Respectfully submitted,

/s/ Gerald S. Gold
GERALD S. GOLD
and

/s/ Gerald A. Messerman
GERALD A. MESSERMAN
Attorneys for Respondent
GOLD, ROTATORI, MESSERMAN & HANNA
1100 Investment Plaza
Cleveland, Ohio 44114
Telephone: 696-6122

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA PLAINTIFF VS. JOHN P. CALANDRA DEFENDANT	Case No. CR 71-300 Motion to Suppress and Return Property Illegally Seized JUDGE GREEN

[Filed, Aug. 17, 9:50 AM '71, Clerk U. S. District Court Northern District of Ohio]

Defendant, by undersigned counsel, respectfully moves, pursuant to Rule 41(e) of the Federal Rules of Criminal Procedure, that all items seized by agents of the United States government during a search of the residence located at 700 Quilliams Road, Cleveland Heights, Ohio, and a search of the premises located at 700 East 163rd Street, Cleveland, Ohio, which searches were conducted on December 15, 1970, be ordered suppressed for the use as evidence, and that all such items be ordered returned to defendant. As grounds for this motion, defendant asserts the following:

1. There was not probable cause for believing the existence of the grounds on which these warrants were issued.

(a) The Affidavit states that on November 13, 1970, one JOSEPH LANESE, a purported gambler and bookmaker, was surveyed to the Royal Machine & Tool Company, located at 700 East 163rd Street, of which company defendant is president and owner. The Affidavit does not allege the purpose of that visit. It does not allege whether or whom JOSEPH LANESE saw or spoke with. It does not allege that any unlawful transactions occurred at this time. It does not state who made the observations reported in the Affidavit. Moreover, it does not even allege that JOSEPH LANESE ever gained entrance to the premises. In short, the Affidavit is without the faintest suggestion that anything unlawful was attempted during this visit.

(b) The Affidavit states that on November 16, 1970,

a Pontiac automobile registered to the Royal Machine & Tool Company was observed parked in front of the residence of JOSEPH LANESE; that while this Pontiac was there, JOSEPH LANESE advised one ANTHONY DELSANTER, in a telephone call to the "Fai-Com Club," that LANESE and someone called "JOHNNY" would later see DELSANTER; and that the Pontiac and LANESE's vehicle were later surveyed to the vicinity of the Fai-Com Club. The Affidavit fails to state the identity of the driver of the Pontiac. It does not set forth an allegation that the driver was an employee or agent of either defendant or Royal Machine & Tool Company. It does not even allege that the Pontiac was seen in front of LANESE's residence and observed in the vicinity of the Fai-Com Club on the same day. Although the Affidavit does state that someone called "JOHNNY" purportedly accompanied LANESE, it does not state that "JOHNNY" was either observed at LANESE's residence, seen driving the Pontiac, or observed at the Fai-Com Club; i.e., there was no showing that "JOHNNY" had any connection with Royal Machine & Tool Company. Likewise, the Affidavit fails to show that Royal Machine & Tool Company was in any way involved in unlawful activities.

(c) The Affidavit states that Informant One advised on December 4, 1970, that as of that date defendant used his home and his office on East 163rd Street for his bookmaking operation. The Affidavit contains no allegations whatsoever that the informant had personal knowledge of any of the facts he reported concerning defendant. The Affidavit does not describe any underlying circumstances from which the informant might have concluded that defendant used his home or office for illegal purposes. Nor does the Affidavit contain any corroboration of this Informant's assertions that defendant used his home or his office for bookmaking.

(d) The Affidavit recites that JOSEPH LANESE placed a telephone call to defendant's home on November 15, 1970, which call "disclosed the betting relationship," and that LANESE, later on that day, telephoned defendant at the Fai-Com Club to advise him of "changes in the line." This assertion establishes no more than that defendant may have been a bettor, and does not

imply that he was a bookmaker. It has been held that the placing of bets does not constitute a violation of 18 USC § 371, § 1084, or § 1952.

2. The property seized from defendant was not that described in the warrant, bore no reasonable relationship to the purpose of the searches, and did not fall within any of those categories of items which may be seized even though not particularly described in the warrant.

(a) Both of the search warrants here related to "bookmaking records and wagering paraphernalia consisting of but not limited to betting slips and cash, bet notices, and books of records which are intended for uses in violation of § 371, § 1084 and § 1952, Title 18 USC."

(b) The items seized from defendant's place of business, generally characterized, were sports information sheets of a general circulation, address books, personal and corporate financial records, lists of telephone numbers from desk pads, and a stock certificate. The items seized from defendant's home included banking records, address books, and weapons belonging to members of defendant's family.

3. The books and papers seized from defendant's home and place of business constituted "testimonial and communicative" items which are protected from seizure by the Fifth Amendment to the United States Constitution.

WHEREFORE, defendant respectfully prays this Honorable Court to order that all physical evidence seized from defendant's home and business be suppressed, as well as any and all evidence, testimonial, direct or indirect received as a result of the within illegal searches and seiuzres. Further, that all physical items seized thereunder be returned to the defendant forthwith.

/s/ Gerald S. Gold
GOLD, ROTATORI, MESSERMAN & HANNA
By: GERALD S. GOLD
Attorney for Defendant
1100 Investment Plaza
Cleveland, Ohio 44114
Telephone: 696-6122

SERVICE

A copy of the foregoing Motion to Suppress and Return Property Illegally Seized and attached Memorandum in support thereof was served on Robert Gary, United States Department of Justice, Organized Crime Strike Force, 526 Standard Building, Cleveland, Ohio 44113, this 16th day of August, 1971.

/s/ Gerald S. Gold
GOLD, ROTATORI, MESSERMAN & HANNA
By: GERALD S. GOLD
Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO EASTERN DIVISION

UNITED STATES OF AMERICA PLAINTIFF VS. JOHN P. CALANDRA DEFENDANT	Case No. CR 71-300 Supplemental memorandum in support of motion for suppression and return of property illegally seized JUDGE GREEN

[Filed Aug. 25, 4:02 PM, '71, Clerk U.S. District Court Northern District of Ohio]

I. Even if the affidavit presented probable cause to search defendant's person and/or residence, the search warrant directed to the Royal Machine and Tool Company was invalid when issued.

Assuming, *arguendo,* that the Affidavit set forth sufficient information for a finding of probable cause to search defendant's person and/or residence, probable cause to search the Royal Machine & Tool Company must be ascertained without regard to such suspicions, that is, there must be probable cause as to every particular place to be searched under a warrant. A suspected criminal does not disseminate his taint like a carrier spreads typhus. For the issuance of a valid search warrant, there must be probable cause for the belief that what is sought will be discovered at the *particular* premises to be searched. See *Camara v. Municipal Court,* 387 U.S. 523, 535, 18 L.Ed. 2d 930, 939, 87 S.Ct. 1727 (1967), 47 Am.Jur. Searches and Seizures, § 26 (1971 Supplement), and 31 ALR 2d 864-868.

This self-evident Fourth Amendment principle has been applied in numerous federal cases. *United States v. Price,* 149 F. Supp. 707 (D.C. D.C. 1957), presents not only a correct application of this principle, but also a factual complex directly on point to the instant case. Defendant Price was known as a numbers writer by an officer who had placed bets with him on seven separate dates. After he placed each bet, the officer observed the defendant proceed to one particular apartment, then to another. Search warrants were issued for both premises. The second premises were owned by an individual who had twice been arrested for numbers

operations. The court, holding that alleging the above facts did not establish probable cause for the issuance of a search warrant, stated that the affidavit revealed nothing suspicious about the premises. The court found that the officer's investigation disclosed no evidence that Price was obtaining from, or depositing at, the premises any numbers material whatsoever.

Significantly, the officer in *Price* had proof positive of defendant's violation, while here only vague suspicions existed. *A fortiori*, the instant Affidavit discloses no suspicion about Royal Machine & Tool Company. It is of no consequence whether probable cause is claimed to have attached to either defendant or JOSEPH LANESE. The presence of these gentlemen at these premises, as set forth in the Affidavit, was innocuous; the Affidavit, in all but its unsupported conclusions, reveals nothing to the contrary. The Affidavit discloses no unlawful transactions whatsoever on these premises.

In *Bynum v. United States*, 262 F.2d 465 (D.C. Ct. App. 1958), the defendant was arrested without a warrant solely because he admitted ownership of an automobile which the arresting officer knew had been used in a robbery. The court held that the arresting officer did not have probable cause for believing that the defendant had committed a felony. [Despite *Bynum's* being an arrest, rather than search situation, it pertains here; each requires the same quantum of "probable cause".] Likewise, no suspicions which might have attached to the Pontiac automobile registered to Royal Machine & Tool Company may be imputed to that firm, especially where the identity of its driver was not even alleged in the Affidavit.

II. The warrant, not particularly describing the place to be searched, countenanced a general search of Royal Machine and Tool Company.

The Royal Machine & Tool Company occupies a two-story building. The first floor, which houses numerous items of equipment and machinery, consists of approximately 13,000 square feet of working area. The second floor contains a general office area of approximately 1,500 square feet, and a smaller office occupied by defendant and his secretary. (See the attached Affidavits, E, F and G). On December 15, 1970, virtually every nook and cranny on both floors were subjected to a four hour search. The first

place searched was the second-floor general office area. Included in the search were each of the numerous filing cabinets, four desks, and even an employee's lunch bag. Subsequently, the officers entered defendant's office. There, they rummaged through the desks of both defendant and his secretary, every filing cabinet and the office safe. Contemporaneously, they searched the shop area, examining every tool box and equipment crib. This ransacking cannot be characterized as anything other than an unconstitutional general search.

An examination of the instant Affidavit should have led the Commissioner to the same conclusion. The Affidavit alleges no more than that Joseph Lanese, an alleged bookmaker, was once surveilled to the Royal Machine & Tool Company. The Affidavit does not state whether he went to the shop, or the general office, or defendant's office. To construe this allegation as presenting probable cause to search a particular place would render the Fourth Amendment an absurdity; if this is a "particular" description, it would be equally feasible to issue a warrant for every building visited by a suspected criminal, were it the White House or a shoeshine parlor, as well as every street he traversed between them.

Any contention by the plaintiff that this warrant particularly described the premises to be searched would be an argument of the most specious facility. The usual cases in which the courts have demanded greater particularity of description of large buildings are those in which a warrant describes an entire apartment building, but there is probable cause to search only one apartment. See 11 ALR 3d 1330-1347. These cases acknowledge that the scope of a warrant to search depends upon the extent of the showing of probable cause as to a particular place, and unequivocally refute the notion that simply stating a correct address constitutes sufficient particularity.

For example, in *United States v. Hinton*, 219 F.2d 324 (C.A. 7, 1955), the affidavit alleged the sale of heroin by certain residents of an apartment house, but the search warrant commanded a search of the entire building. Holding that the affidavit did not show probable cause to search the entire building, the court ruled that the warrant was not valid when issued and that the search was illegal. The court arrived at this conclusion despite its recognition of probable cause regarding the apartments of four particular

persons. The court further stated that it would have been of no consequence if these four were the only persons living in the building. The *Hinton* case may not be distinguished from the case at bar because the former involved an apartment and the latter a commercial establishment. The protections of the Fourth Amendment apply equally to both. See, e.g., *Mancusi v. DeForte*, 392 U.S. 364, 367, 20 L.Ed. 2d 1154, 1159, 88 S.Ct. 2120 (1968), and the cases cited therein. Moreover, the proscribed evil is the same: the expedient of securing a search warrant for any large structure, used by many persons for many purposes, by simply reciting the correct address and the color of its bricks.

The fact that the officers had no probable cause to search any particular part of the premises of Royal Machine & Tool Company was clearly established by their conduct during the search, described above (*Supra*, at 3).

III. The papers and documents seized at the Royal Machine and Tool Company were unlawfully seized because they were the result of an exploratory search.

Assuming, *arguendo*, that these individual papers and documents, when interpreted in combination with each other, might constitute evidence of a crime, it was unlawful for the officers to look beyond the faces of these papers and documents or to seize them without a warrant.

The latest pronouncement of the Supreme Court on this subject is found in *Coolidge v. New Hampshire*, — U.S. —, 29 L.Ed. 2d 564, 91 S.Ct. — (June 21, 1971). There the Court reaffirmed its view that the police may seize evidence in plain view without a warrant, so long as they had a valid justification for their original intrusion. But the Court also reaffirmed the principle that such warrantless seizures are permitted only within narrow limits:

> Of course, the extension of the original justification is legitimate only where it is *immediately apparent* to the police that they have evidence before them; the 'plain view' doctrine may not be used to extend a general exploratory search from one object to another until something incriminating at last emerges. *Id.*, at —, 29 L.Ed. 2d at 583. (Emphasis added).

This same principle was applicable to *Stanley v. Georgia*, 394 U.S. 557, 569, 22 L.Ed. 2d 542, 552, 89 S.Ct. 1243 (1969)

(Stewart, J., concurring), where a search warrant was directed to evidence of bookmaking, but allegedly obscene films were seized. The criminal nature of this evidence was not in plain view; rather, it ascertained only after the officers spent some fifty minutes exhibiting them by means of a projector found in another room.

Likewise, the papers seized from the defendant at bar, could not have "immediately appeared" to be anything other than normal commercial records and forms. Under *Coolidge, supra,* the plaintiff may not assert that these records, having been integrated into some artificially constructed whole, appeared to be evidence of any crime, because the officers are strictly forbidden from fabricating such sand castles.

/s/ Gerald S. Gold
GOLD, ROTATORI, MESSERMAN & HANNA
By: GERALD S. GOLD
Attorney for Defendant
1100 Investment Plaza
Cleveland, Ohio 44114
Telephone: 696-6122

SERVICE

A copy of the foregoing Supplemental Memorandum in Support of Motion for Suppression and Return of Property Illegally Seized was served on Robert Gary, United States Department of Justice, Organized Crime Strike Force, 526 Standard Building, Cleveland, Ohio 44113, this 25th day of August, 1971.

/s/ Gerald S. Gold
GOLD, ROTATORI, MESSERMAN & HANNA
By: GERALD S. GOLD
Attorney for Defendant

EXHIBIT E

STATE OF OHIO
CUYAHOGA COUNTY } SS:

AFFIDAVIT

DONALD LYNN SMITH, being first duly sworn according to law, deposes and says that he is twenty-three years of age and has been employed at the Royal Machine and Tool Company since October of 1970 with duties as a general purchasing agent and other clerical duties.

Affiant further states that on December 15, 1970, he was present in the offices of the Royal Machine and Tool Company located on the second floor of a two story brick building at 700 East 163rd Street, Cleveland, Ohio. The general office area consists of a space approximately 1,500 square feet. Located within this office area are desks for approximately four employees, blue prints and drawing tables, and numerous filing cabinets containing work orders, blue prints and other general business documents. At the north of this general business office area is a room containing old files and business documents. To the south of the general business area is another office separated by partition in which are located the desks of Mr. Calandra and his secretary.

Affiant further states that at approximately 12:10 P.M. on December 15, 1970, he was present in the general business offices of Royal Machine and Tool Company, at which time three federal agents and a Cleveland detective identified themselves and stated they had a search warrant for the premises. They searched all the desks of the employees, including affiant's lunch bag, and all files in the numerous file cabinets. At approximately 1:30 P.M. they began a search of the office adjacent to the general business office where the desks of Mr. Calandra and his secretary are located.

Affiant further states that he left work at approximately 4:10 P.M. The search was still in progress.

FURTHER AFFIANT SAYETH NOT.

/s/ Donald Lynn Smith
DONALD LYNN SMITH

SWORN TO BEFORE ME and subscribed in my presence this 25th day of August, 1971.

/s/ Rosemary Grdina Di Santo
ROSEMARY GRDINA, *Notary Public*
For Cuyahoga County, Ohio
My commission expires Apr. 21, 1975

EXHIBIT F

STATE OF OHIO
CUYAHOGA COUNTY } SS:

AFFIDAVIT

JOSEPHINE C. POPP, being first duly sworn according to law, deposes and says that she is forty-six years of age and that she has been employed by the Royal Machine and Tool Company for approximately twenty-five years as a tool crib attendant.

Affiant further states that her duties include the issuance of tools to the various employees and the collecting of same from them. Affiant states that her work area is located on the first floor of the east side of the plant located at 700 East 163rd Street. The remaining first floor of the plant contains numerous pieces of heavy machine equipment.

Affiant further states that on December 15, 1970, during the working hours, in the afternoon, a federal agent entered the tool crib area and asked questions concerning what was located in various drawers and cabinets and thoroughly searched drawers and cabinets which contained tools and other equipment.

FURTHER AFFIANT SAYETH NOT.

/s/ Josephine C. Popp
JOSEPHINE C. POPP

SWORN TO BEFORE ME and subscribed in my presence this 25th day of August, 1971.

/s/ Rosemary Grdina Di Santo
ROSEMARY GRDINA, *Notary Public*
For Cuyahoga County, Ohio
My commission expires Apr. 21, 1975

EXHIBIT G

STATE OF OHIO
CUYAHOGA COUNTY } ss:

AFFIDAVIT

LOUIS A. KOSAR, being first duly sworn according to law, deposes and says that he is forty-eight years of age and has been employed as an all around machinist with the Royal Machine and Tool Company for approximately twenty years.

Affiant further states that he operates various pieces of equipment and machinery located on the first floor of the Royal Machine and Tool Company at 700 East 163rd Street. The first floor area which houses numerous pieces of equipment and machinery consists of approximately 13,000 square feet of working area.

Affiant further states that while employed during the afternoon hours of December 15, 1970, federal agents thoroughly searched the entire plant area including a desk within a room which is air controlled due to the special nature of the heavy machinery located therein.

FURTHER AFFIANT SAYETH NOT.

/s/ Louis A. Kosar
LOUIS A. KOSAR

SWORN TO BEFORE ME and subscribed in my presence this 25th day of August, 1971.

/s/ Rosemary Grdina Di Santo
ROSEMARY GRDINA, *Notary Public*
For Cuyahoga County, Ohio
My commission expires Apr. 21, 1975

EXHIBIT I

AFFIDAVIT

NORTHERN DISTRICT
OF OHIO

I, THOMAS J. RARDIN, Special Agent, Federal Bureau of Investigation, having been duly sworn, state:

On December 15, 1970, at the time of the search of the Royal Machine and Tool Company, 700 East 163 Street, Cleveland, Ohio, I was aware that an investigation into possible violations of Title 18, United States Code, Sections 892, 893 and 894 (Extortionate Credit Transactions), was being conducted by the United States Attorney's Office for the Northern District of Ohio, and that DR. WALTER C. LOVELAND was a victim of this shylocking operation.

/s/ Thomas J. Rardin
Signature

Sworn to before me and subscribed in my presence this 23d day in August 1971.
Mildred H. Eakin
Notary Public

My commission expires Dec. 26, 1972

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA, PLAINTIFF, vs. JOHN P. CALANDRA, DEFENDANT.	Criminal Action No. CR 71-300

[Filed Nov. 22, 10:13 AM, '71 Clerk U.S. District Court Northern District of Ohio]

PROCEEDINGS BEFORE HONORABLE FRANK J. BATTISTI, CHIEF JUDGE, AT 10:25 A.M., FRIDAY, AUGUST 27, 1971.

APPEARANCES:

On behalf of the Plaintiff:

MR. ROBERT D. GARY and
MR. STEVEN R. OLAH,
Assistant United States Attorneys.

On behalf of the Defendant:

GOLD, ROTATORI, MESSERMAN & HANNA, by
MR. GERALD S. GOLD and
MR. ROBERT J. ROTATORI.

[2] FRIDAY, AUGUST 27, 1971.

THE COURT: Mr. Gold and Mr. Rotatori.

MR. ROTATORI: If it please the Court, we are here today on a continued hearing in regard to our motion for a continuance filed with this Court last week concerning the application of the Government for an order immunizing Mr. John Calandra.

Now, the issues raised in our application for a continuance were, number one, that sufficient notice was not given under the Federal Rules.

That problem has been cured. The continuance of the hearing did provide us now with sufficient time within the rules to present our objections to the Court.

Now, regarding the second and the next ground for the argument in behalf of the request for the continuance, the application presented to this Court shows on its face that the questions asked of Mr. Calandra before the Grand Jury and the questions for which immunity is being requested are questions which the Government obtained the basis for as a result of a constitutional violation upon Mr. Calandra personally, that constitutional violation being that he and the business premises of Royal [3] Machine and Tool Company, of which he is the principal officer, were subject to an unreasonable search and seizure under the Fourth Amendment in that the affidavit used in support of the search of those premises did not contain sufficient evidence upon which the Magistrate, or at this time, the Commissioner, could deduce that there was probable cause to believe that those premises were being used for a violation of Federal law, specifically, gambling in violation of Sections 1952 and 371, and that on those premises were located instrumentalities, contraband, or fruits of those particular crimes.

Now, in addressing ourselves first to the question of the propriety of the Court's hearing at this time, since the Government has raised that question in their response to our memorandum, we are principally relying on, as the Court knows, the case In the Matter of: Joques Egan. This case was decided on April 5, 1971 by the Third Circuit sitting en banc.

The question presented there was Sister Egan had been immunized before a Grand Jury in Harrisburg, Pennsylvania. Her counsel at that time objected to the immunization order on the basis that certain [4] questions propounded to her before the Grand Jury were the result of illegal electronic surveillance of her. The Court ordered the witness to testify in the Egan case.

She continued to refuse to testify and was held in contempt by the Court.

In the contempt hearing, the counsel for Sister Egan again raised the question of the propriety of the propounding of questions before the Grand Jury which were the fruits of an illegal electronic surveillance.

The Court of Appeals for the Third Circuit sitting en banc decided that the District Court was required to conduct a hearing on that question. Their decision was on the

question of whether the questions propounded in the Grand Jury were the result of electronic surveillance or not, whether Sister Egan's personal rights had been violated.

Now, they buttressed their decision on two grounds primarily. First of all, their decision was buttressed on the fact that under the exclusionary rules decided by the courts under the Fourth Amendment, that if there was a violation of a Fourth Amendment right and that violation was the basis for the substance of the questions being asked the [5] witness before the Grand Jury, that she had a right to have that issue adjudicated prior to being compelled to answer.

Secondly, the Third Circuit decided that Congress, in the enactment of the Omnibus Crime Bill of 1968 which authorized the Government, under certain conditions, to obtain court-ordered wire taps and eavesdropping, Congress stated specifically in Title 18, Section 2515, a part of the Omnibus Crime Bill, that any evidence obtained in violation of that section of law which set up the procedures for obtaining court-authorized wire taps, any evidence obtained in violation of those provisions could not be presented to any governmental body, including a Grand Jury, and therefore, the Third Circuit decided that the District Court could not violate that specific statutory provision by compelling the witness to answer questions, because the answering of those questions would, in effect, introduce into that proceeding, the Grand Jury proceeding, evidence obtained in violation of that statutory provision.

THE COURT: Let me ask one question.

If immunity is granted, I assume from your argument that your witness will refuse to answer in any event; is that correct?

[6] MR. ROTATORI: That is correct, your Honor. I represent that to the Court, that we feel again we would have the opportunity to raise these issues in a contempt hearing.

THE COURT: All right.

MR. ROTATORI: And that was my next argument. This hearing is not premature.

THE COURT: What it goes to, of course, is whether we are premature.

MR. ROTATORI: In the sense that we are representing to the Court that this argument would be made again. There

would be no answering of questions on the basis of the propositions presented to the Court here.

THE COURT: Then it is clear on the record, then, that if immunity is granted, he will not answer, he will refuse?

MR. ROTATORI: That is correct, your Honor.

THE COURT: All right.

MR. ROTATORI: Now, the Government's argument basically to the denial of a hearing on these questions at this time or in a contempt hearing were, I think, fairly disposed of by the Third Circuit.

[7] Many of the cases the Government states in its memorandum are situations where a witness, before the Grand Jury is attempting to raise third-party rights, says, "I will not answer that question, because that question was the result of a constitutional violation upon someone else, and that is where you have got the information upon which you are asking me these questions."

This is not the case here. We are contending and are prepared to show that the constitutional violation of which we complain was perpetrated upon the witness himself, the person who is now raising that question. I think that is clear.

THE COURT: Yes, that is clear. Yes.

MR. ROTATORI: In addition, the questions we raise are not ones which in any way would impede the progress of the Grand Jury. These are questions, as the Third Circuit points out, which can be speedily disposed of by virtue of representations of both parties and, on the law, presented by both parties.

So I don't feel that this proceeding in any way would impede the orderly administration of Grand Juries and the orderly investigatory process of a Grand Jury.

[8] THE COURT: Is this not really the only time that this matter can be raised, because this witness is going to be, at least on the representation of the Government, immunized and he would not be indicted?

MR. ROTATORI: That is correct, your Honor. He would never be a party defendant to any criminal proceeding and, therefore, would not be in a position to raise his rights.

Now, certainly, there are decisions which say that when an indictment is not pending, a person can file a motion to suppress evidence, for suppression and return. It then takes the nature of a civil case.

But since the Government is moving first here, the Government is moving to obtain the benefits of an alleged constitutional violation, and if the Government is allowed to proceed further, the very reason for moving to suppress would be gone, the violation would have occurred.

So in that sense, the Court is quite correct. This is the only time Mr. Calandra can effectively move for the protection of his constitutional rights.

THE COURT: Then I would suppose the Government can search under an obviously insufficient [9] or bad warrant, perhaps even no warrant, if we held this, for example, to be premature and did not afford a hearing at this juncture.

MR. ROTATORI: This is the problem that faced the Third Circuit, and it was the principal basis upon which the Third Circuit remanded the matter to the District Court for the holding of a hearing.

The Third Circuit was very much troubled with the same question this Court raises. They were troubled over the fact that if a hearing were not afforded, the Government could continue to use the fruits of unconstitutional activity and——

THE COURT: We would, in effect, be formulating such a rule.

It is probably superfluous to ask, but the Fourth Amendment would seem to be designed to keep enforcement officers in line; correct?

MR. ROTATORI: That is correct, your Honor. That is the very basis of the exclusionary rule decided in the case of Mapp vs. Ohio. That was the purpose of the exclusionary rule as the Supreme Court stated. It was to pronounce an effective procedure whereby law-enforcement officers would be discouraged and prevented from violating constitutional [10] rights and attempting thereby to use the fruits gained from that violation.

The Supreme Court stated in that case that this is the only effective means they have. Prior to the Mapp case, as your Honor will recall, the only effective means a person had of bringing forward his violations upon constitutional rights, his personal constitutional rights, was to bring a civil action against the investigative officers involved.

The Supreme Court said historically, this has proven to be inadequate. It hasn't stopped in the slightest way in-

vestigative officers and police officers from violating the Fourth Amendment.

Therefore, they decided that the exclusionary rule, as a matter of historical significance, was necessary and that any evidence obtained in violation of a constitutional right could not be used in any proceeding, to use the words of Silverthorne.

THE COURT: At this point, let us go to the sufficiency and scope of the warrant.

MR. ROTATORI: Yes.

THE COURT: Then if I have to inquire further along this line after hearing from the Government, I will.

MR. ROTATORI: Basically, it is the [11] contention at this time, your Honor——

THE COURT: I would assume pretty much the substance of what you will argue is contained in your brief anyway.

MR. ROTATORI: That is correct, your Honor.

THE COURT: On the questions you are now arguing.

MR. ROTATORI: Yes.

We raise the constitutional issue in regard to the search of the offices of the Royal Machine and Tool Company.

Your Honor, in this investigation, regarding search warrants issued connected with John Calandra, there were three search warrants. One was issued for the search of his person, one was issued for the search of his personal residence—and these facts are all admitted by the Government—and one was issued for the premises located at 700 East 163rd Street, the building of the Royal Machine and Tool Company, which Mr. Calandra is an employee and an officer of that company.

Now, it is fundamental, it is axiomatic that each search warrant in this case relating to Mr. Calandra must be supported by a sufficient showing [12] of probable cause. That, of course, is the wording of Rule 41, and it is a constitutional requirement as pronounced by the Supreme Court.

Now, the problem in this case in regard to the sufficiency of these warrants is the fact that the same affidavit, identically the same affidavit, was used in support of each of these three warrants.

I think, therefore, we must examine each warrant individually and the affidavit, that very same affidavit, as it relates to each warrant.

Whether or not there was probable cause for the search of John Calandra personally is not being raised in this proceeding.

Whether or not there was probable cause for the search of his personal residence is not being raised in this hearing.

The question being raised in this hearing, which is relevant to the hearing because the questions asked in the Grand Jury were derived from the evidence obtained from the search of the Royal Machine and Tool Company, is whether that same affidavit used to support two other warrants is sufficient to establish probable cause in regard to the search of the Royal Machine and Tool Company.

What does the affidavit relate in regard to [13] establishing whether or not there is probable cause to believe that a crime is being committed on the premises of the Royal Machine and Tool Company, that there are instrumentalities, contraband, or fruits of those gambling crimes on the premises of Royal Machine and Tool Company?

The quantum of probable cause must be weighed in considering the Royal Machine and Tool Company and the affidavit's sufficiency in regard to Royal Machine and Tool Company.

The affidavit really states only two things in regard to Royal Machine and Tool Company as to whether there is probable cause to believe there are instrumentalities and fruits of gambling crimes on those premises. It states, one, that an informant advised on 12/4/70 that John Calandra, as of that date, would accept bets and lay off bets and that Calandra uses his home and office at East 163rd Street for his bookmaking operation. That is what Informant 1 states in regard to Royal Machine and Tool.

In addition, there is the statement in the affidavit that an automobile registered to Royal Machine and Tool Company was seen in front of the home of Joseph Lanese.

[14] The only other remaining factor in this voluminous affidavit relating to Royal Machine is that the automobile registered to Joseph Lanese was seen on one occasion in front of the premises occupied by Royal Machine and Tool Company.

So we have two unoccupied automobiles, no description as to who was driving those automobiles on the particular occasion, being seen once in front of the premises of Mr. Lanese and once in front of the premises of Royal Machine

and Tool and the statement of the informant. That is all we have as to the sufficiency of probable cause concerning the search of Royal Machine and Tool.

Now, obviously, I think the fact that an automobile is seen in front of a person's home is, as the Supreme Court determined in Spinelli, a seemingly innocent occurrence which the Govermment is attempting to use to buttress probable cause.

As to the question of the informant's statement, the Government presents a unique argument in regard to this informant. They say the informant presented personal information in regard to Joseph Lanese, that the informant personally bet with Lanese and, therefore, he has presented underlying circumstances, underlying facts to justify his [15] reliability amd his belief in line with Spinelli and the recent Harris case.

But the Govermment is attempting to use that personal contact with Lanese to buttress the same informant's information in regard to Calandra, for in regard to Calandra, the informant stattes nothing as to how he knows Calandra is using his business premises for bookmaking activity. He merely makes the statement that he is using the premises for bookmaking activity.

On page 4 of the Government's brief, they state "For the most part, the courts have found underlying circumstances sufficient to justify the reliability of the informant when he has taken part in the act he reports."

Then they go on to say that "The informant had personal knowledge of the bookmaking activity of Lanese."

Of what value is that, that personal connection and contact between the informant and Lanese as it applies to Mr. Calandra?

If we were to accept that argument, your Honor, it would lead us to this conclusion. If an informant states that he has personal contact with an individual and then this individual, in some means [16] or manner, has contact with a third person, then, the Government argues, the reliability of the informant is established as to the third person.

It would present this type of situation, your Honor, and I think this analogy is appropriate. Let's assume that Mr. Gary knows and even bets with an individual who is involved in interstate gambling activity. Obviously, Mr. Gary has a home, so he goes to his residence. He has a

place of employment in the Standard Building. Now, let's assume that this individual parked his car in front of the Standard Building on one occasion and there is probable cause to believe that this other individual, Mr. Lanese, was involved in bookmaking and interstate gambling activity.

Would that justify the Government in obtaining a search warrant for the offices in the Standard Building which Mr. Gary works in?

I don't believe so.

The same would apply, for example, if there were probable cause to believe that I personally was involved with an individual in interstate gambling activity. That individual would come to my law office or his car would be seen in front of my law office.

[17] Does that mean that there is probable cause to believe that I'm involved in bookmaking activity and, more important than that, that the law office is used in bookmaking activity?

And then to the next question, the scope as it relates to probable cause, because I don't believe we can divorce scope of a warrant from probable cause.

If this individual for which there is probable cause to believe he is involved in interstate gambling, his automobile is seen in front of my law office, would there be probable cause to search the entire law office, the entire business establishment? Not just my personal office, but the entire establishment, a search of everyone's desk on those premises, a search of every file cabinet on those premises, whether it be my personal file cabinet or not?

This is the situation we have presented in regard to the search of Royal Machine and Tool Company.

THE COURT: Where did they obtain the documents that the Government did obtain pursuant to the search in the Royal Machine and Tool Company? Where were the documents?

MR. ROTATORI: I believe these documents [18] were obtained from the business portion of the premises, where the clerical work is done.

THE COURT: Were they in something? Were they in a vault or something?

MR. ROTATORI: They were in a filing cabinet, your Honor. The top drawer of this filing cabinet contains a combina-

tion lock for the top drawer. The other three filing cabinets contain key locks. I believe the Government termed it——

THE COURT: In other words, these documents just weren't spread out on a table somewhere?

MR. ROTATORI: No, they were not, your Honor. It necessitated the opening of these filing cabinets with a key and also, I might add, the calling down to the office of the secretary who had the combination to the top drawer.

THE COURT: They were not something in plain view?

MR. ROTATORI: No, your Honor. I would not think it was in plain view.

In addition, the entire premises of Royal Machine was searched.

Now, the offices are on the second floor, and I think this is significant in determining whether they had a proper description of where to search as [19] it relates to probable cause.

They searched the entire first floor, which is some 13,000 to 15,000 square feet occupied with heavy equipment machinery for tool and die making.

They also searched the tool crib on the first floor and went through virtually every drawer in that tool crib.

Then up on the second floor where the business offices are located, the clerical staff, everyone's desk was searched there, including each employee's personal desk. The lunch of an employee was searched.

THE COURT: The lunch?

MR. ROTATORI: A lunch bag, his lunch bag.

Also, every file in that clerical space was searched in the sense that some disregarded old files that had been locked up in a storeroom, that area was ordered opened and a search of all of those records, a search of all the blueprints pertaining to the equipment to be made and the other work of Royal Machine was searched.

Now, I think this is relevant as the Supreme Court has used it in determining whether we are involved here with a search for specific items for which there has been probable cause delineated in [20] the affidavit or whether we are involved with a general exploratory search for anything and everything. The Supreme Court has made ref-

erence in numerous cases to the extent of the search, both geographically and timewise.

And by the way, this search took place over a four-hour period by four agents. That is significant because the Supreme Court has looked to these factors to determine whether or not a search is violative of the scope requirements of the Fourth Amendment.

Generally, if the probable cause is specific to believe that certain material, instrumentalities, or contraband is in a particular place, the Supreme Court has found from experience the search will be very short in duration if that probable cause is specific and indeed good and that the scope geographically of the search will be very limited, and they say this relates back again to probable cause, because if there is cause to believe that there is something there, sufficient cause under the Fourth Amendment, they are going to be able to go there and get it quickly without rummaging throughout the entire premises. I think those factors are significant in determining the scope of the search as it relates to sufficiency of probable cause.

[21] Now, the question that the Government raises I assume is an argument where, first of all, the Government contends that they had probable cause to search Royal Machine and Tool.

I think it is clear that they did not.

But they say once on the premises of Royal Machine and Tool, they ran across the records seized, the stock certificates and other financial records, account cards and cognovit notes. They say these were evidence of a crime and that this evidence was in plain view.

Now, the Supreme Court just recently in the Coolidge case, decided as one of the last cases this term before it recessed, had an opportunity to go over the plain-view doctrine, and the requirement they stated concerning plain view is just that. It must be in plain view and it must be immediately apparent and immediately in plain view. It is a question of immediacy.

Now, the plain-view doctrine presents no problem, your Honor, when an agent walks in under a valid search warrant and he sees on the desk a hundred pounds of heroin. There is no question that this is contraband. It is in plain view. Or he sees the fruits of a crime. He sees the stolen furs [22] right there.

This is something in plain view. This is something which immediately the agent can recognize, and therefore, the Court has extended the scope of the search warrant to the extent of allowing him to seize this.

Now, what we have here is the examination, as the Government admits in its own response, of 106 cards, and I assume each one was examined. Now, when you have to sit down and examine 106 cards and examine the number of stock certificates that they examined, this can be hardly considered in plain view.

This is much like the Supreme Court case of Stanley vs. Georgia, decided in 1970, where again agents went in to an establishment looking for gambling records and paraphernalia, Federal agents, and they came across several reels of film. They took the reels out, unraveled them, looked at them, then ran them on the projector in the office.

The Supreme Court said this was not a seizure of evidence incident to the executing of a valid search warrant because this was an examination. This didn't have the immediacy that we are talking about when we speak of plain view.

[23] We feel for those reasons, your Honor, that, first of all, there was not probable cause for the search of Royal Machine and Tool Company, that assuming arguendo that there may have been, then the seizure of documents of which we complain was outside the scope of the warrant and outside the scope of any exceptions decided by the Supreme Court.

THE COURT: Mr. Gary.

MR. GARY: Your Honor, with the Court's permission, since Mr. Olah and I have briefed separate questions to be presented to this Court, I would ask permission to respond to the question of whether or not the hearing is timely at this point and that Mr. Olah be permitted to respond to the question of the validity and scope of the search warrant.

THE COURT: All right.

MR. GARY: It is the Government's position that the real issue before this Court is the right of a third-party witness to refuse to testify before a Grand Jury under a grant of immunity because of the nature of the evidence before the Grand Jury.

The position of the United States is that regardless of the validity of the search and seizure [24] question, that

the immunized witness has no constitutional right to object to testifying before the Grand Jury at this time.

THE COURT: If you went in with no warrant, would he have any right to be in this court now contesting an examination before the Grand Jury on the basis of evidence that you obtained?

MR. GARY: Your Honor, under the theories of the Second and Ninth Circuit, the witness would have no right under the Fourth Amendment to contest this under a motion to suppress, but would have that right——

THE COURT: To sue the Government.

MR. GARY: —would have the right to sue the Government and for a motion to return.

It is the Government's position that Mr. Calandra at this time has filed a motion to suppress which is not properly brought because it is not in connection with a criminal case in regard to the shylocking records and that his proper motion at this time would be a motion to return and not to suppress, and I believe this has been supported by the Sixth Circuit in the United States vs. Curry.

THE COURT: You mean that when you are faced with a pleading question here, he didn't file [25] the right motion?

MR. GARY: Correct, your Honor.

THE COURT: Can I consider this a motion to return the evidence at this time?

MR. GARY: Your Honor, if you consider Mr. Calandra's motion as a motion to return the evidence rather than a motion to suppress, I think even Egan would indicate that there was no standing. Even under the theory of Egan, Mr. Calandra would have no standing at this time.

THE COURT: Why?

MR. GARY: Because Egan held that he had standing because it was directed against him in regard to the Fourth Amendment.

A motion to return has no Fourth Amendment issue involved in it.

THE COURT: Well, on the basis of your argument, you can send your agents in anywhere. You can go out and search my home this afternoon with no warrant, and the only remedy I have, then, is to file a lawsuit against you or file a motion for a return of whatever you took, but I cannot prevent you from using whatever you have obtained in a Grand Jury in questioning in regard to it.

MR. GARY: At that time, your Honor, [26] however, once an indictment had been returned, then your right would arise in a criminal matter.

THE COURT: Oh, yes.

MR. GARY: And Fourth Amendment rights would arise at that time.

Mr. Calandra is asserting, I take it, a right of privacy.

THE COURT: But since you are going to immunize this man, there would be no time in which he can raise this issue except, as you say, by virtue of a motion to return.

MR. GARY: Your Honor, we are getting into important matters of policy.

THE COURT: Yes, we certainly are. In other words, the policy that the Government ought to enforce with regard to the conduct of law enforcement officers in the United States.

MR. GARY: The risk the Government runs, your Honor, and the deterrent to law enforcement is that should the Government seize evidence in violation of the Fourth Amendment, no conviction can be brought. That is the deterrent.

But on the other hand, if Mr. Calandra's position is accepted, the Grand Jury would be rendered virtually useless as an effective investigatory tool.

[27] THE COURT: Let me ask you this. Do you agree that the Fourth Amendment was designed to keep enforcement officers in line, so to speak?

MR. GARY: Yes, your Honor. I agree with that.

THE COURT: I would think one would have a pretty hard time sustaining your——

MR. GARY: But the manner in which the Fourth Amendment, in regard to this situation, keeps enforcement officers in line is that once an indictment has been brought and the evidence has been obtained in violation of the Fourth Amendment, it cannot be used. There's no possible way to obtain a conviction. That is the deterrent.

On the other side of the question, if the Government is not allowed to examine third-party witnesses before the Grand Jury without a whole, entire hearing, then the Grand Jury would be delayed for months and would be rendered ineffective as an investigatory tool.

THE COURT: Let's make the assumption that you have a bad warrant.

What manner of policy are we adhering to in the United States if we permit law enforcement officers to go in and search unlawfully one's [28] premises and obtain property, documents belonging to that person? Do you think that our policy ought simply to extend to the ability on the part of that party to file a lawsuit and exclude from whatever policy considerations are before us the ability to prohibit the Government from using the fruits of that search in any way?

MR. GARY: Your Honor, if I may be allowed to develop my——

THE COURT: Let me put it another way.

You wouldn't go in and take it on a bad warrant if you knew you couldn't use it. That would stop the illegal searches.

But if you knew that all that was going to happen was that sometime later, he could file a motion for a return of the documents or file a lawsuit against FBI agents or those who directed him, there would surely be encouragement to continue to violate the Fourth Amendment by way of illegal searches.

It would seem to me the policy would just be abominable.

MR. GARY: If I may be allowed to develop my argument.

The Government, of course, is aware that there [29] is a split between the Second and Ninth Circuits and the Third Circuit.

THE COURT: So am I.

MR. GARY: And later on, I would like to point out that the Supreme Court has recently dealt with this issue. In fact, on August 16 of this year.

The courts have held in the Second and Ninth Circuits that the right of the witnesses arises after the defendant has been indicted.

All the cases cited in the Defendant's brief, such as Egan, deal solely with illegal electronic surveillance.

There is no such issue before this court. We are talking about the validity and scope of a search warrant.

Egan involved, as we said, illegal wire tapping. The Court's decision in Egan went off on three grounds and, in fact, was decided upon 18 U.S.C. 2515, which prohibits the use of illegal electronic surveillance in a Grand Jury.

The Government conceded, prior to the hearing, that there was illegal electronic surveillance.

The Court touched upon 2518(10)(a), which deals again

with electronic surveillance and which is not [30] in question here.

What is in issue is the dicta in Egan and in regard to the Fourth Amendment rights of the sister. As I have said, there is no illegal electronic surveillance here, so 2515 does not apply, nor does 2518(10)(a).

THE COURT: Well, we can analogize.

MR. GARY: Well, I think, your Honor, it really comes down to the Fourth Amendment argument, which in that case was based upon Silverthorne, and even the dissent in Egan, which was a strong dissent, said that Silverthorne has never been extended to one who is not a party.

Mr. Calandra is not a party in the sense that the Grand Jury investigation is not directed against him. He will not be a party in a criminal proceeding.

THE COURT: That is what makes it very important, it would seem, that he be heard now, because he is not going to be a party, he is not going to be indicted if you immunize him.

MR. GARY: I think the Supreme Court, in a minute decision, recognized the balancing question involved here. In Russo vs. United States, which was decided on August 16, 1971, the question [31] had been presented as to what was the standing of a witness to inquire into illegal electronic surveillance. The witness had been immunized, had refused to testify, and was held in contempt.

The question came before the United States Supreme Court on a stay of the contempt hearing, and the Court said that there must be some credible evidence that the prosecution violated the law before the judicial machinery is invoked to delay a Grand Jury proceeding. Apparently, the Supreme Court intended not to halt a Grand Jury proceeding every time a witness raised the question of the validity of the search warrant on a court-authorized wire tap.

In effect, your Honor, that answers your question. In Silverthorne, they had virtually no search warrant. In Egan, the Government conceded there was illegal electronic surveillance.

Yet Mr. Calandra is asking the Court here to take one step further. He is asking the Court to make a decision which is based neither on law nor reason to halt the Grand

Jury proceeding because the witness objects to the validity of the search warrant.

If the courts were to rule in favor of Mr. [32] Calandra, every time a witness appeared before the Grand Jury, he could refuse to testify based upon the Fourth Amendment. The Court would then be obligated to resolve the search and seizure question prior to the taking of any Grand Jury testimony.

THE COURT: If there was a serious question of an illegal search and seizure, why not?

MR. GARY: Your Honor, regardless——

THE COURT: I don't think the Supreme Court says we can't do that. I think they say precisely the opposite, that we can do it, we can inquire into it.

MR. GARY: Your Honor, regardless of whether or not there was a serious question, if there was any question, if there was a search warrant, the Court would be obligated to hear it.

How would you make a determination as to whether or not it was a serious question in advance? That would require a hearing every time.

If then the decision was adverse to the witness, the witness would have a right to appeal. It is thus conceivable that every time a witness appeared before the Grand Jury, the Government would be involved in a delay of a month or possibly a year.

The decision of this Court in advancing the [32] theory of Egan to search warrants in a Grand Jury investigation would tie up the courts in pointless litigation and, in effect, destroy the investigatory nature of the Grand Jury.

Even if electronic surveillance or a search warrant were not in issue and there were no grounds for asking questions based upon a search warrant before the Grand Jury, the witness would still, your Honor, if the Court should rule in favor of Mr. Calandra, have the right to come before this Court to have a hearing as to whether or not the questions were based upon a search warrant.

That, your Honor, would place the Government in the irreconcilable position of having to come forward with the evidence it intends to use before the Grand Jury prior to the time it was required to ask the questions of the witness.

Even the Court in Egan recognized the dangers that were involved in its decision, and the majority decision made

every possible effort to limit the case to a situation involving illegal electronic surveillance in which they were facing a flat constitutional prohibition.

The United States submits——

THE COURT: What is the difference [34] between illegal electronic surveillance and an illegal warrant, insufficient warrant, or other illegal searches?

MR. GARY: The difference is, your Honor, where the Government comes forward and concedes illegal electronic surveillance, that it has already been litigated. The Government has conceded. You are at that point faced with a flat prohibition.

The Government is not agreeing with the decision in Egan but is saying even the decision in Egan is not authority for taking the next step to say that every time there is a question in regard to a search warrant, that a witness has a right to come in and refuse to testify before the Grand Jury.

But the United States, your Honor, would urge that this Court follow the decisions in the Ninth and Second Circuits, particularly in light of the fact that the United States has petitioned for certiorari in re Egan.

Thus, your Honor, it is the position of the United States that regardless of what the determination of the search and seizure question which is pending in the motion submitted by Mr. Calandra before Judge Green is, that the witness Calandra should be required to testify at this time.

That is all, your Honor. At this time, I will turn the floor over to Mr. Olah.

THE COURT: I am going to take a 10-minute recess before I hear Mr. Olah.

(Recess taken.)

THE COURT: Mr. Olah.

MR. OLAH: Your Honor, if it please the Court, the Government contends that the affidavit in support of the search warrant issued in this case contained sufficient probable cause for the search of the premises of the Royal Machine and Tool Company.

The affidavit in question contained information derived from three separate sources: Court-approved electronic surveillance, physical surveillance as conducted by Special

Agents of the FBI, and information supplied to the FBI by a confidential, qualified informant.

During the Course of the lawful interception, Mr. Calandra was identified by name and number during numerous conversations with Joseph Lanese. The majority of these conversations were gambling-related.

Mr. Calandra and Mr. Lanese had a particular [36] conversation in which bets on seven games were discussed, five of which they agreed upon that they had won.

Also, a conversation was overheard in which Mr. Lanese told Mr. Calandra to add Detroit to the list of wagers.

THE COURT: That may be evidence that he is making a bet. But is that evidence that he is operating and conducting a bookmaking operation?

MR. OLAH: Well, I feel that the fact that Mr. Calandra and Mr. Lanese discussed seven wagers and Mr. Calandra was told to add a team, a particular team at a particular date, would indicate—at least there is probable cause to believe that Mr. Calandra might be accepting wagers for individuals other than himself.

In addition to the telephone conversations, the physical surveillance during the period of interception and simultaneous therewith placed Mr. Lanese at the Royal Machine and Tool Company and placed the automobile which is registered to Royal Machine and Tool Company at the residence of Mr. Lanese.

During this surveillance, Mr. Lanese was overheard telephoning another individual in the operation and advising this person that he and Johnny would be [37] coming over to see him at this time.

Finally, the affidavit contained information from an informant of the Federal Bureau of Investigation.

Now, the defendant has not raised any objections as to the qualifications of the informant, so I will direct my argument to the second prong of the Spinelli-Aguilar test; that is, the information which this informant gave to the Federal Bureau of Investigation.

This information——

THE COURT: Wait a minute.

They don't know who the informant is, do they?

MR. OLAH: I would think that they do not.

THE COURT: Very well. It would be rather difficult for them to raise any questions with regard to his qualifications.

MR. OLAH: Well, as the qualifications were set out in the affidavit, your Honor, reciting that he had been an informant for so many years, had given information on so many occasions, and this information had been corroborated by independent investigation by the FBI, that particular set of remarks was not questioned by the defense.

[38] So this informant stated that he had placed wagers with Mr. Lanese and also that as recently as December 4, 1970, one week to the day before the warrant was obtained, he knew as of that date that Mr. Calandra was accepting wagers and lay off wagers at Royal Machine and Tool Company specifically.

THE COURT: But he didn't say that he ever made a bet with Mr. Calandra, did he?

MR. OLAH: No, he did not. He did not specifically enumerate that he had made a bet with Mr. Calandra.

THE COURT: Not that he didn't specifically enumerate. He didn't say it?

MR. OLAH: He didn't say it.

THE COURT: Also, he didn't say anything about anybody else making a bet with Mr. Calandra, did he?

MR. OLAH: No, he did not. That is true.

Now, the actual dealings of an informant with certain defendants as a source for showing that the information received was reliable has come up several times in reported cases in the past. In particular, United States vs. Rich, Fifth Circuit, concerned itself with an informant who purchased obscene films [39] from the defendant and the police officer who personally observed some of these purchases. The informant added that the defendant said that he was going to New York to check on a shipment of some films.

Now, this shipment was the subject of the seizure in question in Rich, and the Court found that the statements in the affidavit were in sharp contrast to those in Spinelli, particularly because the informant's information was based upon personal observations, including his prior purchases.

In the recent Supreme Court decision in United States vs. Harris, the Supreme Court was presented with an informant quite similar to the informant in question in this case, and this informant stated that he had made several illegal whiskey purchases from a defendant. Now,

the majority of the information contained in that particular affidavit was limited to the recitation of these facts by the confidential informant, and he used the words "personal knowledge," that he had personal knowledge that a suspect was making illegal whiskey sales. The informant——

THE COURT: That is a far stretch from what you have here. The informant there said [40] he had made purchases from the man and then went on to say that he had personal knowledge.

I could agree that he had personal knowledge if he made purchases from him.

MR. OLAH: All right. The point I'm trying to get at is that the Court, in holding the affidavit sufficient in that it contained probable cause for the search, held that admissions of a crime carry their own indicia of credibility and they are sufficient at least to support a finding of probable cause for a search.

THE COURT: How do you have that here, commission of a crime?

All you have is an informant said he is carrying on a bookmaking operation.

MR. OLAH: We have an informant who has admitted at least betting with Mr. Lanese.

THE COURT: But not with Calandra?

MR. OLAH: Not with Mr. Calandra. That is correct.

THE COURT: But all we know from what you are saying is that Calandra knows Lanese.

There are probably a lot of people in the City of Cleveland that know him, make bets with him, and so forth.

[41] MR. OLAH: Right.

THE COURT: I'm assuming that he is a bookmaker, now, for the purposes of this hearing.

MR. OLAH: The Government contends that each isolated incident, if taken separately, are, as Mr. Rotatori said, seemingly innocent. I mean, they would appear to be seemingly innocent.

THE COURT: Take them together and let's see how serious they are.

You have observed them together once and you observed his car in front of his home once.

Then you observed Lanese's car in front of his business once.

And you have a bald statement from an informant that

he is a bookmaker, but this informant doesn't say anything about making bets with Lanese or Calandra or that he ever observed Calandra taking a bet or anything like that.

MR. OLAH: That is true, your Honor.

As I say, each isolated incident itself appears to be——

THE COURT: No. Even putting them together, they appear to be innocent.

MR. OLAH: We contend that in the conversations overheard during the electronic [42] surveillance and the physical surveillances and the informant's information, if the information therein is combined, the Government——

THE COURT: It all seems to be consistent with the inference that Mr. Calandra may have made some bets.

Now, let's assume all that you have there is so. So it would seem to me the inference that can be drawn from what is contained in your affidavit is that Calandra made bets with Lanese.

Even though I gave serious consideration on your first appearance in chambers when we discussed it, it seems to me really stretching what is contained in that affidavit to infer that you have sufficient information on which to issue a warrant to search for a bookmaking operation.

That is my feeling at the present time. I haven't decided this. I'm taking all of the circumstances together.

MR. OLAH: Well, again, your Honor, I wish to reiterate that the bets and wagers placed by Mr. Calandra were bet in numbers, five, seven at a time, and so forth, not a bet called in occasionally. It was list of bets that were placed.

THE COURT: It is not unusual among [43] bettors to call a bookmaker and—I don't know. When was this surveillance conducted; in the fall or baseball season or football season?

MR. OLAH: November, your Honor. During football season.

THE COURT: Football season.

Is it really unusual that one person makes seven or eight bets on football games over the weekend in football season? I think that is quite normal on the part of bettors.

MR. OLAH: I support it is not especially abnormal for one person to place a series of bets on a weekend of games on one occasion.

However, throughout the course of the interception, there were several incidents in which a series of wagers was placed.

When Mr. Calandra was told to add Detroit, this seemed to infer that this was another game on which the operation would then be accepting bets, and we feel that taken as a whole——

THE COURT: Who was told to add Detroit?

MR. OLAH: Mr. Calandra.

THE COURT: By Lanese?

MR. OLAH: By Mr. Lanese.

And we feel that taken as a whole, that was [44] sufficient evidence to at least establish probable cause for the issuance of the warrant at that location.

THE COURT: At what location are you talking about?

MR. OLAH: The Royal Machine and Tool Company, that being the issue before the Court at this time.

THE COURT: Well, I have your argument along that line with Mr. Gary's.

What about the scope?

MR. OLAH: With reference to the scope of the search, the Government is aware of the doctrine of Marron vs. United States generally.

While seizing agents are limited to only those items specifically enumerated in the warrant——

THE COURT: Now, remember, you have already admitted before this Court that you didn't go in and pick up any bookmaking paraphernalia.

MR. OLAH: That is correct.

THE COURT: Which was the purpose of your warrant.

MR. OLAH: That is correct.

THE COURT: You went in and claimed you found something else.

[45] MR. OLAH: That is correct.

Several lower Federal tribunals have made exceptions to this broad doctrine, including the Sixth Circuit in the United States vs. Eisner, when the Court stated that when an officer is proceeding lawfully, making a valid search and comes upon another crime being committed in his presence, he is entitled to seize the fruits thereof.

THE COURT: You think they did that here when they went into locked drawers and got someone to open the combination to get into another drawer?

MR. OLAH: Well, your Honor, that brings us into the contention made by Mr. Rotatori that this was, in fact, a general search, and the Government would strenuously ob-

ject to that contention on the grounds that the agents at the time were searching for wagering paraphernalia and bookmaking records.

THE COURT: So when they opened the drawer, whatever is in the drawer is in plain view; is that it?

MR. OLAH: When they opened the drawer, they found the box, the box in question. When the box was opened, the index cards were noticed [46] with names and figures on them.

Now, certainly, the searching agent at the time——

THE COURT: What kind of index cards did you get? You haven't cleared that up.

MR. OLAH: 5 by 7 index cards in a gray metal box.

THE COURT: Yes.

MR. OLAH: The index cards, I believe, contained names of various individuals and figures on them, running totals of figures, this sort of thing.

THE COURT: Those were business records of the Royal Machine and Tool Company, were they not?

MR. OLAH: Certainly some of the names on the cards were evident to the seizing agent at that time, and when he initially opened the box and leafed through the cards, there was reason to believe that these might be evidence of various gambling debts owed to Mr. Calandra and/or others at Royal Machine and Tool Company.

When the agent continued his search, he came upon evidence of the shylocking operation that was currently under investigation. He was able to discern——

[47] THE COURT: What evidence of the shylocking operation did you get?

MR. OLAH: When the agent was looking through the cards, he saw a particular name on the top of one of the cards. The agent was aware that several months prior, the United States Attorney had initiated an investigation into possible violations of 18 U.S.C. 8923 and 8924 and that the name on one of the cards was a victim of this shylocking enterprise currently under investigation by the United States Attorney. The card shows that this gentleman owed certain amounts of money and that the running tally showed that parts were paid, other items were added to the remaining balance as shown on the card.

The agent, being aware of the investigation then being conducted, was perfectly within his authority to seize the

box as evidence of another crime. It is established since the decision in Warden vs. Hayden that mere evidence may be seized, and several courts have held that seizure of items not specified in the search warrant, when evidence of another crime, may be properly seized, including the Eisner court in the Sixth Circuit.

Now, with reference to the cards being in plain [48] view, again I can only say that when the box was opened, the cards, at that time, on their face, appeared to be records of debts owed by various individuals.

An examination by the agent revealed that this might, in fact, be evidence of a shylocking enterprise, the facts of which were apparent to the agent.

The plain-view doctrine, then, would supplement the prior justification and permit the warrantless seizure in that particular instance.

The Government, then, would contend that once the agents were on the premises of Royal Machine and Tool Company searching under the authority of a valid search warrant, the discovery of evidence of crimes other than that for which they were specifically on the premises to obtain evidence for was not an intrusion into the defendant's privacy.

THE COURT: Incidentally, the questions that you intend to put to the witness in the Grand Jury room are based on your search, are they not?

MR. OLAH: They are based upon certain items that were seized during the search. That is correct.

THE COURT: Then the answer is yes?

[49] MR. OLAH: Yes.

THE COURT: All right. Thank you.

Mr. Rotatori, you asked for a moment or two.

MR. ROTATORI: Just briefly, your Honor. I don't want to belabor argument already presented in the briefs and in our supplemental brief.

But just briefly, I want to reiterate to the Court the question of probable cause must go beyond merely the question of whether there is probable cause to believe Mr. Calandra was involved in anything with Mr. Lanese.

After the Court decides that issue, it is the contention of the respondent here that the Court must then proceed to another issue, whether there was probable cause to believe

that those premises, Royal Machine and Tool, were being used in connection with the illegal gambling activity.

We cite one case which I think is particularly appropriate and the only one we have been able to find which is in any way analogous to this case, and that is from the District Court in the District of Columbia where they were involved with a numbers operation and the officer stated that he personally made bets with this numbers operator over a period of weeks, that on each occasion, he followed this [50] numbers operator to an apartment where he had conversation with an individual in this apartment, and then he followed the numbers operator to another apartment where he had conversation with the occupant of the second apartment.

Now, the District Court in that case said there was probable cause to uphold the search warrant of the numbers operator and there was probable cause to believe that the first apartment, which was registered to the numbers operator, there was probable cause to believe that that apartment contained instrumentalities and fruits of the crime, but as to the apartment which he merely visited and conversed with the individual who owned the apartment, there was no probable cause to believe that there were instrumentalities or fruits of the crime in that third apartment.

So I think that is analogous to the situations we have here. Even assuming arguendo that there is probable cause to believe Mr. Calandra was involved in an interstate bookmaking operation—and I feel that is stretching the affidavit. But assuming arguendo that that is true, does that taint carry over to his business establishment in which there is no connection whatsoever except to [51] Mr. Lanese's car was parked out front on one day?

I don't believe that gives——

THE COURT: Well, the phone conversations the Government was talking about, they escape me for the moment.

MR. ROTATORI: The phone conversations, your Honor?

THE COURT: Was that from the Royal Machine and Tool Company?

MR. ROTATORI: No. The only phone conversations delineated in that affidavit——

THE COURT: Is the one where he said to add Detroit?

MR. ROTATORI: Right. And the affidavit states that the call was made to Mr. Calandra's personal residence.

THE COURT: All right.

Well, you have made your argument on the plain view.

What do you say to the question I put to the Government? Once they get into the drawer, for example, then the cards were in plain view, or whatever they seized.

MR. ROTATORI: Your Honor, I don't believe that is what is contemplated by the [52] plain-view exception of the Supreme Court. I think the cases concerning plain view, Warden vs. Hayden and those cases following thereafter, are cases in which an officer enters a premises to execute a search warrant and there on a table, for example, is a hundred pounds of heroin, or as in the Eisner case, stolen furs are packed on a desk which he would have to close his eyes to.

But number one, when you have to go through drawers, open them up, and then, in addition to that, examine 106 cards, I think we come very, very close to the situation of Stanley vs. Georgia, where the officers found, in executing a search warrant, film and they put the film up to the light.

THE COURT: What did they actually seize? You ought to get some of that on the record.

MR. ROTATORI: Well, what was actually seized is listed in the——

THE COURT: There is an inventory attached to the affidavit.

MR. ROTATORI: There is an inventory attached to the affidavit, and in that, your Honor, we have——

THE COURT: What about the cards, for example?

[53] MR. ROTATORI: There is a list of stocks, of course, numerous stock certificates.

As far as the cards are concerned, your Honor, at this moment I don't see there enumeration of the cards on the inventory. The certificates are all listed—oh.

"Gray card holder containing cognovit notes and other notes, papers, and cards indicating names of persons and their indebtedness," is the way the inscription is listed in the inventory.

From the Government's response, they indicated that there were 106 cards, and an examination of 106 cards to come across one name is hardly plain view.

Since the cognovit notes were in the box with these cards, I think it is clear that you are not dealing with gambling

records, because I know of no gambling case in which the bookmaker accepted cognovit notes in return for a gambling debt. It is not a common practice in the bookmaking industry, so to speak. At least, no cases reflect that as a common practice.

But I think the examination, the detailed examination that took place of these cards in order to come across this one name is not consistent with [54] the plain-view doctrine in which we are dealing with something, as the Supreme Court stated in Coolidge, which is immediately apparent to the agent and being accidentally found.

THE COURT: So they have gotten one name, and the Government infers from the notations on the card that a loan had been made to that individual?

MR. ROTATORI: Yes.

THE COURT: And that he was to pay them?

MR. ROTATORI: That is the apparent argument in regard to that card, your Honor.

But even before we reach the plain-view doctrine, they have to be rightfully on the premises, of course.

THE COURT: All right. Yes.

Do you want to say something? Very briefly.

MR. OLAH: Yes.

In regards to the defense contention that the extent of the search, scope of the search in this particular instance was exploratory, I wish to point out to the Court that, again, the agents were there looking for bookmaking records, gambling paraphernalia, items which all too often are easily [55] hidden or destroyed in the interim between when the agents announce their authority and purpose and the time they reach the interior of the premises which they are attempting to search.

THE COURT: In your affidavit, did your informant say that a bookmaking operation was conducted from the Royal Machine and Tool Company or in it?

MR. OLAH: The informant stated, your Honor, on December 4, 1970 that John Calandra, as of that date, would accept bets and lay off bets on sports events and that Calandra uses his home and office on East 163rd Street for his bookmaking operation.

THE COURT: And you went to his home; right?

MR. OLAH: They did go to his home.

THE COURT: You found nothing in reference to gambling; right?

MR. OLAH: Yes.

THE COURT: You searched his automobile; correct?

MR. OLAH: Yes.

THE COURT: You found nothing?

MR. OLAH: Yes.

[56] THE COURT: Then you went to the office and you found nothing involving a gambling operation; correct?

MR. OLAH: Correct

THE COURT: Or bookmaking operation.

MR. OLAH: Again, it is important to remember——

THE COURT: And we have to keep in mind that the informant never indicated he ever made a bet with Calandra. Correct?

MR. OLAH: Correct.

THE COURT: And there is really nothing in the affidavit to show that anybody was making any bets with Calandra.

MR. OLAH: Well, we have the conversations between Calandra and Mr. Lanese which the Government contends infer that Mr. Calandra was placing series of wagers with Mr. Lanese and there is probable cause to believe that perhaps those wagers were being placed for others.

THE COURT: Well, you have conversations showing he made six or seven bets with him.

MR. OLAH: Correct.

THE COURT: During football season.

MR. OLAH: During football season. [57] Yes.

One other thing I would like to point out, your Honor, and that is——

THE COURT: Wait a minute.

And that call did not emanate from Royal Machine and Tool Company?

MR. OLAH: That is true.

THE COURT: It wasn't even made to the Royal Machine and Tool Company. It was made to his home; correct?

MR. OLAH: True.

THE COURT: I would say we have got it about as thin as we can get it.

But I will write on this and respond as quickly as possible.

I don't need any more argument.

Thank you very much, gentlemen, for your lucid argu-

ments and education of the Court in this matter.

Court is adjourned.

(Court was adjourned.)

[58] CERTIFICATE

I, Dennis A. Parise, Official Court Reporter in and for the District Court of the United States for the Northern District of Ohio, Eastern Division, do hereby certify that the above and foregoing is a true and correct transcript of the proceedings herein.

/s/ Dennis A. Parise
Official Court Reporter

SUPREME COURT OF THE UNITED STATES

No. 72-734

UNITED STATES,

PETITIONER,

v.

JOHN P. CALANDRA

ORDER ALLOWING CERTIORARI. Filed February 20, 1973. The petition herein for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit is granted.

☆ U.S. Government Printing Office: 1973—497-944/582